

TEN YEARS AFTER

*A History of Roma School
Desegregation in Central and
Eastern Europe*



Edited by Iulius Rostas



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A History of Roma School Desegregation in Central and Eastern Europe

Edited by **Iulius Rostas**

With a Foreword by **John Shattuck**



Roma Education Fund



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Foreword

The Roma people of Central and Eastern Europe have long been the victims of systemic discrimination, segregation and social marginalization. A movement to overcome this legacy has gradually taken shape during the two decades since the fall of communism and the transition to democracy in the region. The Roma Rights Movement has civic, legal and political dimensions, and is the subject of this groundbreaking and insightful study by Iulius Rostas and his colleagues.

The Roma Rights Movement bears some similarities to the Civil Rights Movement in the United States. Both are aimed at rectifying the wrongs of centuries of institutionalized racism. Both are seeking to change public opinion about the victims of discrimination. Both are working to influence public policy responses. And both movements have encountered organized social and political resistance from the majority population. Despite these similarities, there are major differences between the two movements, and the results so far have been markedly different: African-Americans have achieved substantial civil rights gains in the United States, while progress for Roma rights in Central and Eastern Europe has been minimal.

Desegregation efforts in the United States began in the 1930s, and gathered pace after World War II. During the presidency of Harry Truman, who was re-elected in 1948 with an overwhelming majority of black votes, executive measures were taken to spur civil rights progress. Truman desegregated the armed forces, appointed the first federal black judge and established the first President's Committee on Civil Rights. The media in the dawning age of television raised public awareness of racial segregation. During this period rural Southern blacks began a massive migration to the North and Midwest in search of jobs in the booming post-war industrial cities, and this migration eventually led to an increase in the living standards and social status of African Americans.

Despite federal initiatives and population movements, entrenched prejudice among white communities in the South manifested itself for decades in massive resistance to civil rights progress. Following the US Supreme Court's landmark 1954 decision in *Brown v. Board of Education*, the slow pace of school desegregation in the United States illustrated "how the potentially simple task of transitioning a few minority students into a small number of formerly all-white schools can nevertheless take a long time."¹

It took more than three decades for the civil rights movement to overcome this resistance and create a less hostile political environment. The movement achieved major legislative gains during the presidency of Lyndon B. Johnson, a southerner, in the enactment by the US Congress of the 1964 Civil Rights Act and the 1965 Voting Rights Act.

In Central and Eastern Europe, transformation for the Roma has yet to come. The collapse of the Soviet Union increased the segregation of Roma communities and their isolation from emerging market economies. The post-communist period has been particularly harsh, since the structural benefits of the old system have disappeared and the status and opportunities for the Roma have never been normalized. Although the European Convention on Human Rights and the Race Equality Directive of the European Commission signalled a new European commitment to equal opportunity, the lack of implementation of these principles by political and judicial authorities in the case of the Roma populations of Central and Eastern Europe indicates that rights are still theoretical abstractions for most Roma.

More than four million Roma people are living in the post-communist countries of Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. Comparing their situation after the change of regime to that of African Americans in post-World War II United States, the living standards of Roma in Central and Eastern Europe deteriorated, while the quality of life of African Americans slowly improved.

Segregation in education violates fundamental human rights and is contrary to the principles of non-discrimination. The segregation of Roma students has not been publicly discussed and debated in post-communist Eastern Europe, and the media have not provided significant coverage of the issue. Unlike the Civil rights Movement in the US, the Roma Rights Movement has yet to achieve a concerted impact in the region. Roma

¹ Jack Greenberg, "Report on Roma Education Today: From Slavery to Segregation and Beyond," *Columbia Law Review* 110:4 (May 2010): 981.

communities remain politically powerless, and the new generation of leaders is often less connected to their communities than earlier generations.

Nevertheless, Roma rights have emerged on the political agenda of Central and Eastern Europe. This comes as a result of pressure exerted on governments by international bodies and human rights organizations working on the ground. The enlargement of the European Union has drawn attention to human rights norms in the accession process as governments of new member states and applicant countries have sought to comply with EU regulatory requirements. But, just as in the US in the early days of the Civil Rights Movement, governments have been slow to translate rhetorical adherence to human rights norms into policy action.

Iulius Rostas sets forth a compelling agenda for the Roma Rights Movement in Central and Eastern Europe. This agenda bears a striking similarity to that of the U.S. Civil Rights Movement. Despite many differences in circumstance between the two, they share the same deep moral base and urgent historical demand, powerfully expressed in the anthem of the long struggle for civil rights in the United States: “We Shall Overcome.”

John Shattuck

President and Rector
Professor of Legal Studies
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The writing of this book was possible due to the support of dedicated people. I initiated this project together with Mihai Surdu and Marius Taba. Mihai and Marius offered feedback to the guide for interviews with Roma activists and we conducted together four interviews for the book. Laura Surdu was also helpful in finalizing the guide for interviews. I would like to thank Mihai and Marius for their support for the project.

The Roma Education Fund (REF) financially supported the project. I take this opportunity to thank the members of the REF board for considering school segregation as one of the most important topics regarding education for Roma and for their generous support. REF leadership—Costel Bercus, Toby Linden, Pierre Gassmann, and Judit Szira—offered comments and suggestions that were valuable for the project. Judit Szira also spent time to provide feedback on some chapters of the book. Without the REF leadership support this book would have remained just a good idea.

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I can not close the list without mentioning my family members. My parents always valued education and encouraged us, their children, to do our best. They also considered that interaction with children from other ethnic background is a chance to extend our experience of live while affirming our identity when it matters. The best adviser and critic of my work was my lovely wife, Marianna. Her love, friendship, advice and criticism gave me strength to continue with the project. Many ideas from the book came up during our long discussions on the subject. Although not mentioned in the text, Mari is a moral contributor to the book. I would like to thank Mari for her continuous support even at the time when I had doubts about the project. Emma, our angelic daughter, deserves a big “thank you” and “I love you” from daddy! Both Mari and Emma were deprived of spending quality family time due to my work on this project.

I dedicate this book to my mother Heli, to my wife Mari, and to our daughter Emma, with love.

About the Roma Education Fund

In the face of widespread and persistent segregation against Roma in schools, classrooms, and society at large, the Roma Education Fund offers grants, programs, and scholarships to alleviate segregation and to contribute to Romani children's access to quality education in Central and South Eastern Europe.

Based in Budapest, REF works across the breadth of the educational field, whether early childhood education and care, mentoring and tutoring for secondary school students, scholarships to undergraduates and post-graduates, professional development for young Romani graduates, or definitive research exposing inequalities in national education systems in the region.

Having directly reached nearly 400,000 beneficiaries since its inception, REF is a successful developer of projects and programs that have set the stage for positive changes to national education policies which far too often segregate Romani students and discourage them from learning.

In step with the Decade of Roma Inclusion (2005-2015) targeting housing, education, health, and employment, REF brings together a consortium of international donors and local NGOs in its mission to close the gap in educational outcomes between Roma and non-Roma. In order to achieve this goal, the organization supports policies and programs which provide quality education for Roma, including the desegregation of education systems.

REF's desegregation projects, acknowledged as worthy and successful interventions by many different social actors and policymakers, in parallel with its publications, aim to put desegregation on the agenda of educational systems in the region as a hurdle that must be overcome.

For the latest information and research, as well as philanthropic opportunities, please visit: romaeducationfund.org

Introduction

The number of Roma in Europe is estimated by the Council of Europe at between eight to twelve million, most of them living in Central and Eastern Europe. Estimates from research and international organizations put the number of Roma as high as 800,000 in Bulgaria, 300,000 in the Czech Republic, 600,000 in Hungary, 2,500,000 in Romania and 550,000 in Slovakia.¹ The governments of all these countries have adopted strategies to address the problems the Roma face, and because they are all members of the European Union have access to EU funds to help solve them.

School segregation of Roma children has emerged as an underacknowledged yet critical issue in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. Multiple factors explain why it has taken on such urgency, and each country has developed its own approach, with Hungary, Bulgaria and Romania embarking on a more visible desegregation process.

The first and most important of these desegregation projects began in Vidin, Bulgaria, in 2000, at the initiative of Drom, a local non-governmental organization (NGO), in response to the failure of the Bulgarian government to enact effective desegregation plans.² In April 1999, following two years of intense negotiations with Romani NGOs, the government of Bulgaria adopted its Framework Program for the Equal Integration of Roma in Bulgarian Society, which includes language on desegregating the national educational system. However, the government failed to take any major steps to implement the Program.

In response to this government inaction, during the 2000–2001 academic year, Drom enrolled 275 Romani children from the Nov Pat Romani neighborhood into integrated schools located in the city. The number of children increased to 460 by the end of the academic year; the following academic year, the number of children who benefited from the project

¹ The figures are based on different estimates. For figures of different estimates, see B. Rorke and A. Wilkens, *Roma Inclusion: Lessons Learned from OSI's Roma Programming* (New York: Open Society Institute, 2006) 8.

² For detailed information about the project, see Open Society Institute, *Roma Participation Program Reporter* (August 2002).

increased to 611; another hundred children from the Romani neighborhood enrolled in two mixed schools on their own initiative. The academic achievements of the children participating in the project, both Roma and non-Roma, increased significantly in the new environment, as revealed by subsequent evaluations.³ Given the initial success of the Vidin project, in the next academic year, a number of other NGOs in Bulgaria modeled similar programs on Drom's strategy, implementing projects in Pleven, Montana, Stara Zagora, Sliven, and Kaskovo.

The idea of a book on Roma school desegregation emerged from several informal discussions on the subject I had with friends. The topics for discussions were initially larger: the future of the Romani movement, the European Union and human rights, Roma migration and challenges to the EU member states, etc. Since all the participants were involved with the school desegregation process, the discussions narrowed down to that subject. One of the conclusions was that even those interested in the problem did not have a clear picture of what was going on across the region. Details and lessons from some desegregation efforts in the recent past were already lost, or simply overlooked in the debate.

Another conclusion of these discussions was that different people knew what was going on, but there was not enough information available on the subject to piece together the whole puzzle. For example, one might know in detail the situation in one country, but lack basic information on what is going on in others, as some interviews with Roma activists and education experts revealed. Moreover, most of this knowledge has not been properly documented and most of it is not available in writing.

Thus, the idea was born of compiling a book to bring together information from across the region. It was conceived at an interesting moment—the 2010–2011 academic year marks the tenth anniversary of that first desegregation project in Vidin.

This book aims to serve as a reference for academics and policy makers, especially those involved in education, on the policies and programs for desegregating Roma children within the educational systems in Central and East European countries: Bulgaria, the Czech Republic, Hungary, Romania and Slovakia.

³ K. Kanev, *The First Steps: An Evaluation of the Nongovernmental Desegregation Projects in Six Bulgarian Cities* (Budapest: Open Society Institute, 2003) and *Roma Education Fund, On The Road To Maturity: Evaluation of the Non-Governmental Desegregation Process In Bulgaria* (Sofia: Bulgaria Helsinki Committee, 2008) available at: <http://www.romaeducationfund.hu/publications/studies-and-researches>

The book is divided into three parts. The first part is an analysis of the institutional answers to the issue of segregation by governments, NGOs and international organizations. It is based on analyses of public policies and legal documents, secondary analyses of existing empirical data and studies, individual interviews with leading Romani activists and lawyers, and policy analyses from prominent policy reviewers. By analyzing the different definitions of segregation used by the governments, specialized anti-discrimination bodies, courts of law, experts, and Roma activists, it shows the challenges posed in defining segregation, and in settling on a legal definition that is enforceable and applies to a majority of such cases.

The second part consists of in-depth interviews with the Roma activists that assumed a leading role in the desegregation process, or spoke widely against school segregation in the five countries. The interviews cover much of the post-communist period, with references to the foundation laid by the communist period. Topics include the way segregation became an issue in education, strategies used to put it on the political agenda, desegregation programs and policies, and an evaluation of the current situation. Each interview is critically reviewed by a policy or educational expert from the concerned country. They were asked by the editor to provide information on some topics included in the guide for interview used with Roma activists but also to comment the statements made by the interviewees. Each reviewer received guidelines from the editor regarding the structure of the comments and on content. Thus, the reader will get a balanced image about each specific country. In this way, while the book gives a voice to these Roma activists, it is not propaganda material.

The third part identifies possible solutions and trends for the future of Roma school desegregation. This part takes as its point of departure the shared consensus in the public discourse that segregation is undesirable, and that segregation is against human rights standards. It aims to identify key issues that the countries must face to move forward from the current state of affairs.

In addition to reviewing government desegregation policies and programs and serving as the beginning of a critical discussion of the matter, the book provides empirical data on the current state of affairs. It includes cross-country comparisons of the results of these efforts, and gives a voice to the Roma activists who have been at the forefront of the issue.

The book also analyses the actions and reactions of European Union institutions, the Council of Europe, the Organization for Security and Cooperation in Europe, and UNICEF, as well as international donors such as European Commission, the Open Society Institute, the World Bank, and

the Roma Education Fund. These organizations were important players that influenced governmental responses to segregation.

One might argue that this approach focuses too narrowly on just segregation/desegregation, and does not consider alternative approaches to minority education. There is a significant difference between segregation in education and minority education. Segregation in education pertains to the domain of fundamental rights as it affects the right to education and the principle of equality and non-discrimination. Minority education, on the other hand, is important for protecting the rights of national minorities and promoting their identity in public space. In the last twenty years, scholars have developed a significant literature on the rights of national minorities, their integration into society, and theoretical models emphasizing these aspects. Will Kymlicka, Anne Phillips, Biku Parekh, Charles Taylor, Amy Gutmann and Kwame Anthony Appiah are just some of the scholars who have focused on these aspects. However, irrespective of its importance in society, minority education does not belong to the domain of fundamental rights.

This book approaches the education of Roma as a matter of fundamental rights. It does not affirm the superiority of its approach towards minority education. Education in Romani language is important and parents should have the right to choose which type of education is right for their children. But the focus here is rather on how mainstream education provides for Roma children—not about minority rights, minority integration, and multiculturalism.

The issue of Roma school desegregation is an ongoing one with fluctuations regarding its place on the governments' agenda and its public resonance/visibility. Nevertheless, as long as Roma will be on the agenda of the European governments—and signs are it will be for years to come—the issue of school segregation will be open for debate and negotiation. It is my hope that this volume will mark a moment to shed light on what has been accomplished and, just as importantly, not been accomplished, and that it will fuel a debate about what happens over the next ten years.

Julius Rostas

Budapest

February, 2012

CHAPTER ONE

Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations

MARIUS TABA AND ANDREW RYDER

Introduction

In one of the pioneering texts on the issue of Roma education, Jean Pierre Liégeois comments on the value of education to Roma communities:

Education increases personal autonomy, providing the tools for adapting to a changing environment and a means of self-defence from the forces of assimilation; it makes it possible to break out of the passive rut of welfarism to play an active role in cultural and political development.¹

Yet the reality for many of the three million Roma children living in Europe is that they are denied educational inclusion and the opportunities outlined by Liégeois, instead large numbers of Roma children are consigned to schools for the mentally disabled and special educational needs or substandard or segregated learning experiences.

The European Roma Rights Center has noted the social and economic consequences of school segregation:

In such schools, Romani children do not earn a diploma preparing them for life in a democratic society and competitive labor market. Quite the contrary: they are denied the right to education and emerge stigmatized as “stupid” and “retarded.” They will live out their adult lives under-educated, unemployed or condemned to low-paying, menial jobs. They will be unable to realize fundamental rights, and will be deprived of basic dignity. Elsewhere, Romani children are segregated from non-Romani children in separate classes or schools because of patterns of ghettoized settlement, or because of raw racial discrimination. Isolated from their non-Romani peers and frequently taught by under-qualified instructors, they too emerge from schooling scarred by the experience and ill-equipped for life in a multicultural democracy.²

¹ Liégeois, *School Provisions for Ethnic Minorities*, 19.

² ERRC, *Barriers to the Education of Roma in Europe*, Budapest, 2002.

The principle that education is a fundamental right which should be free of discrimination is enshrined in international law. For example, it is prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Council of the European Union Directive 2000/43/EC³. International law also prohibits inhuman and degrading treatment, which classified as a result of educational segregation.

The illegality of educational segregation for Roma children has been demonstrated in the European Court of Human Rights Court's by groundbreaking judgments in *D.H. and Others v. the Czech Republic* (2007) and *Sampanis v. Greece* (2008), which rejected the segregation of Romani students into special schools for children with mental disabilities or within mainstream schools on the basis of ethnicity. A ruling that was bolstered by The Grand Chamber of the European Court of Human Rights decision on *Orsus and Others v. Croatia* (2010) that decreed that the segregation of Romani children into separate classes based on language is also unlawful discrimination (see third chapter of the book).

NGOs, international bodies, strategies and legal instruments have all contributed towards pressure for change. This chapter seeks to assess how successful the numerous actors, frameworks, and institutions have been in shaping state policy and delivering desegregation in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia. This appraisal raises serious issues about how educational equality can be achieved in the future, but also raises broader and more fundamental questions as to how enshrined and secure are concepts of equality in Europe today.

Segregation in Central Eastern Europe

As segregation in the region has different patterns and manifestations, it is difficult to measure, understand, and determine whether it is a result of specific local policy or the general national context, or if it is a fusion of the two. There are experts who consider segregation to exist where Roma pupils are placed together in one part of the classroom, usually at the back. Others do not consider segregation to exist if the children share the same facilities, curricula, teaching methods and personnel etc. Clearly profound discrimination can exist even within a more mixed learning environment as well some forms of segregation but for many Roma pupils their experiences

³ For a longer discussion see ERRC, *Stigmata*, 14–19.

of segregation are more overt and transparent. When we speak about segregation of Roma⁴ in education there are three main causes namely residential segregation; local/national educational policies and school choice.

Ghetto Schools: Schools with a majority of Roma pupils

There are cities or neighborhoods that have separate schools for Roma. In many cases the schools are restricted to Roma by local practices or tacit understanding. For instance, if non-Roma schools are to be located near Roma neighborhoods, Roma are banned from enrolling by school authorities on the grounds that no places are available to enroll more children. Despite the extra space in non-Roma schools created by the falling non-Roma population in the region, Roma children are often discouraged from enrolling, or simply denied admission when they apply for enrollment. There are reports of strong negative reactions to desegregation by non-Roma parents, as well as by schools and local authorities in the Czech Republic, Hungary, Slovakia, and Romania attempting either to transfer their own children to other schools, a process known as “white flight,” or preventing the enrollment of Roma pupils fearing that educational standards will suffer.⁵

This type of segregation is evident in all countries that are analyzed in this book but has a greater occurrence in Bulgaria, where around 70 percent of Roma children of school age are educated in “Romani ghettos,” in schools in which the percentage of Roma in the student body is fifty to one hundred percent.⁶ The ghetto schools are mainly the result of residential patterns; withdrawal of non-Romani children from school; or other demographic changes as well the school authorities’ actions. The ghetto schools have a poor physical infrastructure and the quality of teaching in these schools is usually extremely poor.⁷ In addition, the output indicators such as retention, grade repetition and early school leaving, is much higher than in integrated mixed schools. Since the move to new economic

⁴ See Roma Education Fund studies on this subject: Friedman, *School as a Ghetto*, and the Bulgarian Helsinki Committee, *On the Road to Maturity*. Also relevant is ERRC, *Stigmata*.

⁵ There is evidence that the “white flight” phenomenon happens in most of the countries, often when the school has over 30 percent of Roma students. Open Society Institute, *Equal Access to Quality Education*, 45–47, 189–214.

⁶ Information about Bulgarian government policy on improving the situation of the Roma population is available at: <http://www.ncedi.government.bg/en/Brussels%204.11.02-tr.htm>

⁷ Surdu, *The Quality of Education in Romanian Schools, Roma Rights* 3–4/2002.

and political changes following the demise of Soviet influence in 1989, the Roma have experienced acute economic dislocation and impoverishment which has accentuated “ghettoization” and hence the number of ghetto schools.

Placement of Roma in special schools

Another serious problem faced by Roma children, in all countries analyzed, is their placement in special schools for children with developmental disabilities.⁸ According to estimates, Roma are over-represented in these institutions,⁹ comprising between 80–90 percent of the entire student body.¹⁰ School authorities diagnose a high proportion of Roma children as having “light mental retardation” and then send them to “special,” remedial schools or practical schools.¹¹ The “special schools” phenomenon is particularly evident in Slovakia and the Czech Republic, where they are popularly called “Gypsy schools.” However, segregation in “special schools” is occurring in Hungary, Romania and Bulgaria too, though not to the same extent.

The diagnostic test which determines placement in special and remedial classes in countries like the Czech Republic and Slovakia is undertaken by a specialized body, and all the children that are to be enrolled in the first grade are tested (these are known as “school readiness tests”). In Hungary, Romania and Bulgaria the kindergarten or/and primary school teachers propose children to be tested based on their assessment.¹² The result for these children is entrenched segregation and an inferior education. By being enrolled in a special school, Roma children cannot continue further than upper primary education. In places like Slovakia and the Czech Republic (practical schools) the certificates obtained in the special school do not entitle children to enroll in secondary education, and in other countries even though in theory they can continue further, the ma-

⁸ The term “special schools” refers to schools which educate children with mild and mild-to-moderate mental retardation according to the classification of the degrees of mental retardation provided by the International Classification of Diseases.

⁹ The average benchmark of children with disabilities in the OECD countries is 2.5 to 2.8 percent. See OECD, *Education policies for students at risk*, 19.

¹⁰ Open Society Institute, *Equal Access to Quality Education*, 49, and 209–220. Also, see Friedman, *School as Ghetto*. 13 and 21–29.

¹¹ Friedman (2009) *School as Ghetto*: Budapest: REF, 8.

¹² Some times the children are directly transferred to special school and afterwards tested. See ROMEA, “Czech official quits.”

jority of the students cannot comply with the requirements as the quality of education is lower. The system has a lack of qualified teachers, and it offers a reduced curriculum for students.

A majority of Roma parents are not informed about the consequences of being in a special school, and although the law stipulates in the countries under consideration that “informed consent” is necessary, many parents are often ill-informed, or not informed, and in extreme cases coerced.¹³ Even though some Roma parents are aware that their children do not belong in these schools, there are “attractive” benefits such as free meals, clothing, and school supplies unavailable at standard schools, but which are an attractive inducement to families mired in acute poverty. In addition, this type of segregation is further ingrained because some Roma parents want to send their children to the same school their siblings, kin, and social networks attend, or which the parents themselves attended.¹⁴ The majority of special schools in Slovakia are located near to the Romani settlements.

The funding per capita for special schools is much higher than regular schools, with higher paid teachers and other benefits.¹⁵ The higher benefits motivate the teachers and the school authorities to maintain the special schools, so there is a strong incentive for special school managers to attract as many students as possible.

Segregation by classroom

This form of segregation occurs where schools adopt a separate classroom as a result of the teachers’ decision or by implementing different programs and is termed as “intra-school segregation.” Roma children are often segregated into special education classrooms on the grounds of poor academic results and social preparation.¹⁶ For instance, in Slovakia a new

¹³ Parental consent for the placement or transfer of a child to a special school is obligatory in all five of the countries. For more details about the abuse of parental consent, see ERRC, *Stigmata*, 46–48.

¹⁴ ERRC, *Stigmata*, 34–54.

¹⁵ State financing for children in special schools is twice the amount provided per-student in standard primary schools. Roma Education Fund, “Country Assessment Slovakia,” 17–18.

¹⁶ The so-called integrated classes in Slovakia, remedial classes, catch up classes, “zero grades” in other countries. In these classes pupils can follow a normal or “simple, reduced version of” curriculum. See Roma Education Fund, “Country Assessment Slovakia,” 22, and Open Society Institute *Equal Access to Quality Education*, 92–93 and 192–195.

form of special education has been permitted through a program aimed at “individually integrated pupils in regular primary school.” In these cases, children are placed in the “zero-grade system” within regular schools and are taught with special curricula under the supervision of a special pedagogue. These types of special classes, are called “integrated classes,” and receive the highest funding per child in the Slovakian education system.

Another means by which Roma are segregated is through so-called catch-up classes, which are frequently substandard, offering poor quality education in spatially segregated classrooms. The “catch-up” classes are intended to present a transition to mainstream classes but in practice children educated there are never mainstreamed into the regular system, but tend to finish earlier their educational career. Sometimes, the language barriers of the children that do not speak the language of instruction are the motives for establishing them. In practice, the children gathered in the same classroom are not sufficiently trained in the language of instruction, they do not understand the lessons, and in many cases the children become disillusioned and abandon school.¹⁷ School/teachers’ decisions also have the direct result of segregating children in separate classes within the same school, or in separate school buildings of the school.¹⁸

In the case of Hungary there is the system of “private student status,” where the parents of students can opt not to attend school regularly, but only go to take exams. Usually the teachers provide this “opportunity” for Roma children who they consider to have behavioral problems.

In some countries such as Hungary and Romania, the implementation of legal provisions for the education of national minorities is sometimes used as a mechanism of segregating Roma from non-Roma. In Hungary, for example, the implementation of Decree No 32/1997 of the Ministry of Education on the education of national minorities resulted in the formation of homogenous Romani classes. The Decree explicitly linked Romani ethnicity to a lack of social and other skills. The language barriers are

¹⁷ At the beginning of first grade, or during it, one class is formed of only Roma pupils, the so-called C class in Hungary. OSI, *Equal Access*, 264–265. Grouping children that did not attend kindergarten—as most Roma do not. In some countries enrollment in kindergarten is determined by parents’ employment status. Establishing separate classes on the basis of student achievement and socioeconomic background is another practice of segregation.

¹⁸ In Cehei, Romania, all non-Roma pupils (from I–VIII, from Cehei) are placed in the main building. All other Roma pupils (from a Roma village nearby Cehei-Pusta Valea) are placed in an annex building with worse conditions. Romania Human Rights, <http://www.ncbuy.com/reference/country/humanrights.html?code=ro&sec=5>

official motives for establishing separate classes justified by the rationale of the teachers that the children will understand more effectively if grouped together in these classes. In Romania too, there are optional Romani language and literature classes within the mainstream schools and some of the school principals are placing the Roma in the same classrooms as a way of preserving the mother tongue.¹⁹

In Bulgaria, school rationalization and financing per capita has created another way of excluding the Roma. The schools that do not have a minimum number of children to function are enrolling “on paper” children from Roma *mahala* (settlements). There are cases in which children were enrolled in schools that are 50 kilometers away from their homes.²⁰ These children have little choice but to remain at home and are in effect excluded from the educational system.

In all types of segregation there is a clear link between segregation and the quality of education. Segregation leads to the unequal access of children to quality education in the case of “reduced curricula.” Separation in kindergartens and schools invariably leads to lower quality education than that offered in classes and schools with the ethnic majority of the school population.²¹ Direct observation in the field shows that where there are schools with a majority of Roma children or classes with a Roma pupil majority then the quality of education is significantly lower than the quality of education in schools or classes with an ethnically mixed school population. This inequality in the quality of education is determined by the human resources available, infrastructure, resources, students’ participation and other factors. The phenomenon is widespread but sadly the disaggregated data is lacking to measure and locate precisely the scale.

The Teaching Profession

A common factor noted in a number of studies is that the teachers in segregated schools tend to hold low expectations of Romani pupils, with some subscribing to a culture of poverty perspective which contains a perception that normal intellectual development and achievement is not

¹⁹ Magyari-Vincze, “Country Report on Education: Romania,” Budapest, 2008, 15 and 36–37.

²⁰ Discussion by Marius Taba with Roma activists in Kustendil, Bulgaria in 2008, during a training session on Monitoring and Evaluation sponsored by the REF.

²¹ Kertesi, *Segregation in the Primary School System in Hungary* 2.

possible for Romani children, who in their minds have been socialized in a sub-culture which promotes limited aspirations.²² Such views bolster support for segregated schools, where tailored and segregated education is seen as the best tool to achieve the integration of Roma pupils into mainstream society. Others are influenced by the enhanced financial rewards for working in these schools. Of course there are teachers who strive to achieve the best they can for Roma pupils in segregated schools but inadvertently are supporting a system which is in effect pedagogically counter-productive. Forging partnerships with the teaching profession in promoting desegregation and changing perceptions is therefore not an easy task but is one that can be achieved through extensive training and dialogue.²³ New approaches to teaching can focus on modern, competence-oriented and student-centered educational methods combined with effective classroom management, effective organization of schools, creating cooperative and collaborative relationship between pupils, teachers and schools.²⁴

In many schools in the region a mono-cultural and teacher-centered curriculum predominates, leading many Roma pupils to cultural and educational alienation. However, in many cases the cause of educational failure is blamed on the Roma community itself, the educationalist Arthur Ivatts argues that the education system needs to look more closely to itself for reform, “the fundamental issues being faced are primarily concerned with changing majority society attitudes, structures and professional practice that currently are the real hindrance to the successful inclusion of the Roma/Gypsies into schools and the society at large.”²⁵

Inclusive teaching and learning environments adopt a human rights-based approach to education. Thus schooling is respectful of human rights—both in words and in action, in schoolbooks and the schoolyard.²⁶ A central goal of this approach is respect for the right to quality education as opposed to merely viewing the issue as one of access which has been the predominant view of the countries in question who have tended to adopt a “needs approach.” Full realization of the right to education is not merely a question of access but is a holistic one, encompassing access to education, educational quality (based on human rights values and principles) and the environment in which education is provided. Such an ap-

²² ERRC, *Stigmata*, 43. See also Vasile, “The Context For The Study On Roma Education,” 33–47.

²³ Olomofofe, “ERRC Human Rights Workshops.”

²⁴ Kézdi, *A Successful School Integration Program*, 52.

²⁵ Ivatts, *Roma/Gypsies in Europe*, 9.

²⁶ UNICEF, *A Human Rights-Based Approach to Education For All*, xiii.

proach embraces interculturalism, acknowledging the traditions of Roma students and incorporating into the curriculum opportunities to celebrate Roma culture but also space for the learning practices that some Roma are accustomed to namely oral and interactive learning approaches, approaches which tend to be stifled in the teacher-centered classroom.²⁷

The promotion of inclusive educational practice presents a major challenge for teacher training programs and institutions, as such inclusive educational practice contrasts with the teacher-centered approaches which a majority of teachers in the past have adopted and which has been promoted in educational systems. Even where more intensive teacher training programs are in operation the problem has been ensuring teachers' actually deliver new approaches in the classroom. An important lever of such pedagogic change could be the school inspection process but it is striking that none of the countries in question make explicit references in their National Action Plans to this and inspection measures that can not only promote inclusive pedagogical approaches but also monitor progress in desegregation and pupil achievement.

All the countries in question have recognized the value of improved teacher awareness and training. However, the lack of a systematic approach is revealed in the National Action Plans that the countries submitted for the Decade of Roma Inclusion (for a fuller discussion of the Decade see page). The table below summarizes references to teacher training and development, it should be noted that Slovakia and the Czech Republic only make generalized references to teacher training.²⁸

Countries	Teacher Training
Bulgaria	2.1.1. Establishment of an electronic library/information database, including materials on intercultural learning, human rights etc. 2.2.6. Forums on training in multicultural and bilingual environment 4.1. Seminars for 20 training teams, who will provide training for pedagogical staff in intercultural education and human rights
Czech Republic	Define problems with training within further learning for established teachers of pedagogical schools (and based on this definition to create concrete training including multicultural education (Page 3)

²⁷ Vasile, *The Context For The Study On Roma Education*, 13.

²⁸ The National Action plans can be accessed at: <http://romadecade.org/>

Hungary	Review of the efficiency of the pedagogic, educational program conducted in nearly 50 “ghetto schools” revealing alternatives for the elimination of segregation (Page 5) The concept of integrated education, schooling are defined in Article 39/D and 39/E of Decree no. 11/1994 (08/06) by the Ministry of Public Education on the rules of the operations of educational and training institutions (Page 5) Promotion of the accreditation of language teacher and foreign-language interpreter trainings in the higher-education training of pedagogues. Development of training materials, support of the related researches, surveys (Page 5)
Romania	References to teacher training
Slovakia	Reference to training being one of the determining factors of a “change implementation”

Translating the ideals of inclusive education and a human rights approach into concrete actions by the state and school authorities has proved to be problematic. In a small number of cases Roma who have become disenchanted with mainstream education and the prospects for change have created their own schools in the belief that this provides a better environment for achievement. A notable example is the Romani activist Emil Scuka who started a chain of private Roma-specialized high schools in the Czech Republic.²⁹ However, some Roma community leaders argue that such voluntary separation does not provide the systematic change that is needed for the benefit of the Roma community in its entirety and does not challenge prejudice as it fails to promote interaction between Roma and non-Roma pupils. Hence, a majority of Roma community leaders continue to argue for desegregation but the progress in achieving this goal has been slow and continued failure could lead to greater calls for separate Roma schools or disillusionment leading to even lower educational participation rates by Roma pupils.

A wide range of national and international observers and institutions have been critical of the widespread existence of Roma school segregation in Bulgaria, Czech Republic, Hungary, Romania and Slovakia. The following section of the chapter details the impact of national and international factors in influencing state policy in these countries to desegregate.

²⁹ Kavanová, “Passing the Book.”

The Role of NGOs

In exploring the development of desegregation policies an important place to start is by considering the responses to segregation at the community level as reflected through Roma advocacy and NGO activity as this has been a key catalyst for change. Although attempts to raise the issue of Roma educational exclusion were made in the 1970s and 80s they rarely offered much direct criticism of segregation, instead tending to operate within the status quo of segregated educational systems. Efforts to initiate widespread desegregation became more prominent in the 1990s in Central and Eastern Europe. A driving force for this process were a number of national and international NGOs utilizing legal actions and pilot projects as levers for change. Human rights lawyers, working in unison with NGOs like the European Roma Rights Center used legal challenges as a strategic lever to counter segregation. The perceptions of these early challenges were often shaped by the experiences of the American Civil Rights Movement and reflecting this it was with the establishment of the European Roma Rights Center in 1997 that the term segregation started to be widely used.³⁰ In these legal cases we should not forget the determination of Romani parents who were prepared to sanction legal action and go through what was to prove for many of those involved to be a long and arduous process which set them at odds with authority, never an easy position for a member of the Roma community to take.

Activism at the grassroots level also played an important part in the challenge to segregation. For example, in Bulgaria the NGO Drom initiated at a grassroots level an active program of desegregation which involved busing in Vidin.³¹ The basic idea was to develop models of good practice at local community level which could demonstrate that integration *can* work and proceed to advocate for the replication of these models. The primary goal of the project was to deliver educational integration for Roma children of the Vidin Nov Pat Romani settlement by transferring them to the Vidin's mainstream schools. The project initially involved 300 Roma children but expanded in the following two years, reaching more than 700 children in the 2003–2004 school year, (70 percent of all children attending school in the Romani neighborhood of Vidin).³² The success of the Vidin project was also demonstrated by the fact that Petar

³⁰ See Rostas, *Desegregation Advocacy Strategies*, 126.

³¹ *Ibid.*, 122.

³² Russinov, "Desegregation of Romani Education: Challenges and Successes," 16.

Stoyanov, then the President of the Republic of Bulgaria, endorsed this initiative by declaring his aspiration that it would become common practice in the rest of Bulgaria.³³ According to Rumyan Russinov, who from 2000 to 2005, was Director of the Roma Participation Program (RPP) at the Open Society Institute and actively involved in the Vidin Initiative, the program was instrumental in dispelling certain myths that were obstacles to advancing educational inclusion namely:

- (i) Roma parents would not allow their children to attend school because of fears of harassment and or were indifferent to educational achievement because of lower aspirations.
- (ii) Roma children would not be accepted by their peers in mainstream schools and parents would withdraw their children from the schools where Roma are admitted.
- (iii) Roma children will struggle with higher academic standards

The Vidin initiative disproved these fears and misconceptions, opposition from the wider community and teaching establishment changed to growing levels of acceptance and the majority of the Roma children reached the level of their non-Roma peers and, by the end of the first year, achieved academic success comparable to that of their non-Romani peers.³⁴

The Roma NGO Drom did not work alone in this project but received support from NGOs with a broader geographic remit of working with Roma communities in Central/Eastern Europe, namely the Open Society Institute Roma Participation Program (RPP). Thus, as well as using the lessons of the Vidin initiative more widely across Bulgaria they have been extended to other countries in the region. The establishment of the Roma Education Fund, a Budapest based NGO which was created in the framework of the Decade of Roma Inclusion in 2005 has a pan-regional remit to promote educational inclusion and has proven to be an important development in further promoting desegregation across the region.

As in Vidin a central principle of desegregation plans has been for Roma organizations and advocates (a number of which are featured in this book) to take the lead, the latter often having benefitted themselves from

³³ Community Planning, "Bulgaria Leadership and vision for the scaling-up of Romani school desegregation."

³⁴ Decade of Roma Inclusion, "Real Sustainability Comes When Roma Are Doing It for Themselves."

integrated learning programs. Such involvement has been instrumental in mobilizing the support and trust of Roma parents and children to have the confidence and courage to enter new learning environments. However, a significant impediment has been the lack of resources and skilled activists as well as grassroots involvement which NGOs have been able to draw upon to mount desegregation programs and campaigns. Rostas and Niccoara note:

To date, advocacy for desegregation has been primarily the work of a relatively small group of human rights and Romani political activists with limited human and material resources, a lack of expertise, and an insufficient legalistic understanding of the phenomenon. These limitations have meant that those advocating for desegregation have, in most cases, developed a piecemeal approach to the issue, and they have not been able to develop comprehensive strategies addressing the full range of stakeholders or to tailor their message according to the different advocacy targets involved. More importantly, they have failed to generate a grassroots movement among Romani communities in support of desegregation or to make inroads into public awareness about segregation and educational inequalities.³⁵

However, the biggest frustration for the NGO sector has been the fact that for Governments in the region a “basic needs” approach is the reality of state policy where the basic requirements of Roma pupils are reflected in either initiatives to improve service delivery or advocated for but which does not effectively engage in a human rights discourse which would countenance more dynamic and inclusive policy frameworks which would provide a central role for the NGO sector in desegregation.

International Factors in Desegregation

After the fall of the communist regimes in the region the authorities in these countries looked for greater integration with Europe as was expressed by their desire to join the Council of Europe (CoE), North Atlantic Treaty Organisation (NATO), and later the European Union (EU), in a process termed as “Euro-Atlantic integration.” In this context, Roma issues were placed among other political and economic issues to be tackled as part of their entry and acceptance. The Council of Europe underlined to new members the need for policies to improve minority rights and during the process in the early 1990s the issue of Roma was placed on the agenda. The adoption of the Framework Convention for the protection of na-

³⁵ Rostas, *Desegregation Advocacy Strategies*, 134.

tional minorities was a binding document for CoE signatory members and clearer standards were set as regards minority protection. A priority for NATO was the stability of member countries. Given that there were no Roma nationalist/irredentist groups that wished to partition territories, Roma were thus not prominent in NATO considerations. However, NATO and its enlargement did play a role in promoting the Roma's agenda as a consequence of the bombing of Serbia in 1999. The U.S. and its allies tried to ensure stability in the region, especially as regard minority issues in the neighboring countries (see Russinov's interview in this book).

The United Nations (UN) and Desegregation

Through their regular reports and recommendations the United Nations has made an important contribution to setting the agenda on Roma anti-discrimination. However, aside from regular reports, the UN has developed a consistent series of studies on the Roma situation that has documented the situation of Roma in the countries as well as at the regional level. For instance, Human Development Reports and UNDP *Avoiding the Dependency Trap* (2002) was the first cross-border comparative study of the Roma across five countries (Bulgaria, Romania, Slovakia, Hungary and the Czech Republic). These reports brought to the public attention the socioeconomic disparities among Roma and majority populations in the region. In some reports the UN specifically mentioned the issue of school segregation.

Since 1999 the UN Human Rights Committee has addressed the issue of discrimination against Roma in education, commissioning a report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Special Rapporteur visited the Czech Republic, Hungary, and Romania in 1999 and reported on discrimination in all spheres of life.³⁶ While the report did not address the legal aspects of segregation, it acknowledges school segregation in the Czech Republic and Hungary.³⁷

³⁶ See para 87 of the 1999 report available at : <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd58025667300306dea/8a457423c0bd1f728025673c003460a9?OpenDocument>

³⁷ See CERD, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Hungary. 01/11/2002. A/57/18, par as 367–390, available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/37b6a9d17ac31a98c7000380d9f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/37b6a9d17ac31a98c7000380d9f?Opendocument)

In 2001, the UN Committee were concerned about de facto segregation of Roma in housing and education in the Czech Republic, implying that such segregation was a violation of international conventions. The Committee in particular highlighted the existence of the special schools used as a tool of segregation of Roma students.³⁸ In 2002, the UN Committee referred to the Hungarian policy of “assigning Roma children to schools and classes for the mentally disabled. The Committee is also concerned about discriminatory practices resulting from the system of separate classes for Roma students and from private schooling arrangements.”³⁹ In the same year 2002, the Hungarian government adopted a National Integration Program, which pledged to desegregate all schools by the year 2008. The National Integration Program being one of the first and firmest reactions of the governments from the region. Yet despite this a dramatic and significant change has not been noted.

The World Bank

The World Bank became involved in Roma issues as a consequence of its work in the sphere of poverty and economic development in Central/Eastern Europe and its primary role was as of a broker bringing a diverse range of stakeholders, both government and non-governmental, into dialogue and promoting the sharing of good practice on Roma, and ethnicity in general. In Slovakia, Bulgaria, Hungary and Romania, the World Bank has supported the creation and development of institutions to monitor and deliver Roma inclusion through grant resources from the Institutional Development Fund (IDF). Notably the World Bank was involved in the regional conference “Roma in an Expanding Europe” in July 2003, an event which catalyzed an ongoing dialogue between new Roma leadership and wider policy community and alongside the Open Society Institute has supported Decade Watch an initiative of a group of Roma activists and researchers to assess progress under the Decade of Roma Inclusion which has included a consideration of the progress in desegregation.

³⁸ CERD, *Concluding observations of the Committee*.

³⁹ Ibid.

Decade of Roma Inclusion

In July 2003 a regional conference, “Roma in an Expanding Europe: Challenges for the Future,” took place in Budapest and was organized by the Hungarian Government, the World Bank, the Open Society Institute (OSI) and the European Commission. The event was supported with the cooperation of the UNDP, the Council of Europe Development Bank and the Governments of Finland and Sweden. The purpose of the meeting was to raise public awareness about the economic and social issues that challenge Roma in Central and Eastern Europe as a result of discrimination. The event discussed what kinds of policies are needed in order to address Roma issues and also to incorporate best practices from the existing projects. At the event, Prime Ministers and senior government officials from Bulgaria, Croatia, the Czech Republic, Hungary, FYR Macedonia, Romania, Serbia and Montenegro, and Slovakia participated.

The Decade (2005–2015) is an initiative aimed at improving the economic status and social inclusion of Roma through the establishment of specific benchmarks and National Action Plans (NAPs)⁴⁰ for each country—Romania, Croatia, Montenegro, Serbia, Bulgaria, Hungary, Slovakia and the Czech Republic. Within each NAP, the following priority areas are targeted: education, employment, health and housing inequality.

The National Action Plans for the Decade of Roma Inclusion, 2005–2015 of countries participating in this initiative also include the goal of ensuring inclusion of Roma in mainstream education. Integration/Desegregation of Roma education is explicitly formulated as an objective in the NAP of Bulgaria, Hungary and Romania. The Romanian NAP pledges to “eliminate segregated classes/schools by 2008.” The Bulgarian NAP focuses on “moving the Romani children out of the Roma quarters and closing the segregated kindergartens and schools by taking into account the parents’ preferences; moving the children who do not meet requirements for special education out of the special remedial schools.” The Czech government aims to “achieve full inclusion of children with socio-cultural disadvantage in the educational mainstream” through the system of funding of schools. The Slovak NAP declares an intention to “cut down the number of Roma children attending special elementary schools and special training facilities” but does not provide any mechanisms by which these should be achieved. All the areas covered by the NAPs do not have clear methodolo-

⁴⁰ For detailed action plans see: <http://www.romadecade.org/en/index.php?search=&action=20&id=0&jump=0>

gies and outcomes and indicators. The budgetary allocations are missing. Limited funding is available for areas of importance for reaching the Decade targets when it comes to Roma. As will become evident the activities within the decade are mostly donor funded and project based which raises serious issues about sustainability and uniformity.

The Decade of Roma Inclusion has potential, but appropriate implementation and precise and budgeted actions are crucial for meeting the targets and passing from political rhetoric to meaningful change. As is evident from an observation of the last fifteen years, governments have demonstrated a superficial political commitment to positive action for Roma which has rarely been translated into fundamental change. A basic analysis of the plans tells us that they do not differ from other initiatives that have the intention of achieving Roma integration/inclusion.

The European Union

One of the most influential factors in promoting more inclusive education for Roma was the accession of the countries under consideration into the European Union. Many steps were involved in this process most notably international documents relating to minority protection which held governments accountable for their internal activities vis-a-vis minorities. A strong desire to join the EU compelled the candidate countries to adjust their policies under political leverage, as the process of enlargement involved a permanent screening and analysis by the European Commission to meet the accession criteria.

In this context, countries that are the subject of this chapter developed policies towards Roma before and during the EU accession. At the EU level, following policy commitments based on the Copenhagen criteria and other EU regulations, some mainstreaming efforts have been made concerning Roma inclusion.⁴¹ Since the Copenhagen European Council in 1993 the EU has increasingly emphasized the importance of protecting ethnic and national minorities as a norm and as a political precondition for the accession of central and eastern European candidate member states. The usage of political conditionality was based on the assumption that introducing comprehensive conditions for EU membership stimulated prospective members

⁴¹ Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6 (1) of the Treaty on the European Union. Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.

to align their policies with the standards set by the EU. These “Copenhagen criteria” state that membership requires that the candidate country has “in addition to fulfilling certain economic criteria, stability of institutions and guaranteed democracy, the rule of law and human rights and respect for and protection of minorities are prerequisite for joining EU.” As Roma represent a significant minority in Central and Eastern Europe and their socio-economic indicators are poor it was to be expected that the situation of the Roma would raise serious questions regarding the ability of EU accession states to fulfill the Copenhagen criteria.

In July 1997, the European Commission published the document “Agenda 2000” which dealt with the main areas of policy, such as the EU’s financial perspectives for the period 2000–2006 and EU enlargement. Agenda 2000 mentioned, on the subject of minorities, that integration in the societies of applicant countries was in general satisfactory but the situation of Roma gave a cause for concern in a number of applicant countries. In 1998 the European Commission produced Accession Partnerships to help countries to fulfill the membership criteria, Roma protection was an explicit criteria for Bulgaria, the Czech Republic, Hungary and Romania. Also the protection of Roma was reflected in a distinct chapter of the Regular Reports of the Commission during the whole accession process.⁴² The regular reports were issued annually and represented useful tools for activists and civil society organisations to raise the issues and to influence the agenda at the national level.

Another important dynamic was the elaboration of the Council of the European Union Directive 2000/43/EC,⁴³ implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, a binding instrument for member states of the EU. It prohibits “direct or indirect discrimination based on the grounds of racial or ethnic origin” (Article 1), including in the field of education (Article 3 (g)). The directive requires states to implement effective remedies for persons persecuted by discrimination, and to give standing to organizations to seek enforcement of the directive. Roma activists consider that after the accession the

⁴² From the end of 1998, the Commission made Regular Reports to the Council, reviewing the progress of each Central and Eastern European Applicant State towards accession in the light of the Copenhagen criteria. In that context, the Commission continued to follow the method adopted by Agenda 2000 in evaluating applicant States’ ability to meet the economic criteria and fulfil the obligations deriving from accession.

⁴² The full text of the Council Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

⁴³ Ibid.

EU focus on anti-discrimination decreased as a result of the translation of the Equality Directive into national legislation and cessation of the Regular Reports. There were also problems regarding the limited remit of equality bodies which often lacked the framework, direction and resources to present a serious challenge to discrimination against Roma.⁴⁴

As has been demonstrated Roma issues in general are reflected prominently in international policy debate but the impact is difficult to measure. International bodies have played an important role in raising the issues, but when it comes to implementation the national governments are responsible and, as will become evident, there are serious deficiencies in how these legislative measures, plans, and strategies have been implemented, financed and monitored. Isolated projects with little effect and limited sustainability have been implemented by the governments in question.⁴⁵ Research suggests that this failure is due to a lack of strategic focus and integrated planning in the design and implementation of projects.⁴⁶ As noted one of most influential international institutions has been the EU, in the next section we explore the EU's impact in detail on national policy.

National Government Strategies and the EU

Beyond the legally binding scope of the Council of the European Union Directive 2000/43/EC, limited progress has been made in eliminating discrimination against Roma.⁴⁷ Some forms of discrimination such as segregated education remain difficult to address at the national levels even within the new laws adopted.⁴⁸ Nevertheless, the Directive although it has failed to impose positive measures in key areas, in respect of accession countries, the human rights and minority rights component of the Copenhagen criteria has provided an important mechanism for promoting positive change.

Prior to accession to the EU, all countries prepared, plans called Joint Inclusion Memorandum (JIM),⁴⁹ with the purpose of preparing for full

⁴⁴ Hollo, *Equality for Roma in Europe*, 5–6.

⁴⁵ Harvey, *Making the Most of EU Funds*, 3.

⁴⁶ Hollo, *Equality for Roma in Europe*, 4.

⁴⁷ Cahn, "Roma Rights and Anti Discrimination Law."

⁴⁸ European Commission, "The Situation of Roma in an Enlarged Europe," 17–22.

⁴⁹ The JIMs for countries that joined the EU in 2004, Slovakia, Hungary, and the Czech Republic were issued in 2003 and are available at: http://ec.europa.eu/employment_social/soc-prot/soc-incl/jim_en.html; For Bulgaria and Romania, who joined in 2007, the Bulgaria JIM is at <http://www.ncedi.government.bg/en/JIM.pdf>; the Romania JIM at: <http://www.politici.ro/download/169/>

participation in the open method of coordination (OMC) on social inclusion upon accession. The JIMs outline the principal challenges in relation to tackling poverty and social exclusion, and plan the major policy measures which were to be taken for reaching the EU's common objectives. Within the plans the EU principles are translated into national policies. The JIMs were considered as the basis for the new member states to prepare their first NAP/inclusion after accession. All the JIMs mentioned Roma issues mostly in relation to poverty reduction. Concerning education the following issues were highlighted: school exclusions, early school leaving, intercultural education, developing lifelong learning programs. Within the JIMs the issue of Roma segregation in education is mentioned in the memoranda for Bulgaria⁵⁰ and Slovakia.⁵¹ While in the Czech Republic⁵² the memoranda refers "to preventing the spatial segregation in housing of vulnerable groups of the population. In Hungary the JIM mentioned "increasing segregation and marginalization of the poorest stratum of the population."⁵³ On page 11 the high proportion of Roma that are educated in separate classes and in special schools are mentioned. In the Romanian JIM segregation is referred to as "a result of residential segregation, schools to which Roma children go together with other poor children are marked by a much lower quality of teaching staff and learning environment."⁵⁴

The EU National Action Plans on Social Inclusion and Social Protection have also presented opportunities to tackle exclusion for Roma.⁵⁵ The situation of Roma was overlooked at the 2000 Lisbon Council meeting, but steadily gained attention after. Although the Roma in particular were targeted in relation to social inclusion and education, they were most often targeted in the context of them forming a vulnerable or disadvantaged group which diminishes the focus. Even in countries with representative Roma populations, Roma communities are not strategically targeted with long-term and measurable objectives in the NAPs on Social Inclusion. In these countries, Roma organizations have not been included in the discussions and/or the development of the NAPs on Social Inclusion. In the Peer

⁵⁰ See Bulgaria JIM, 13–14.

⁵¹ See Slovakia JIM, 27–28.

⁵² See Czech JIM, 34.

⁵³ See Hungary JIM, 13.

⁵⁴ See Romanian JIM, 24.

⁵⁵ To see action plans visit: http://europa.eu.int/comm/employment_social/social_inclusion/naps_en.htm

Reviews on Social Inclusion, projects targeting Roma communities are often an afterthought.

In March 2000, the “Lisbon Strategy” was launched which aimed to achieve full employment by 2010. A list of targets was drawn up with a view to attaining the goals set in 2000. Given that the policies in question fall almost exclusively within the sphere of competence of the member states, an open method of coordination (OMC) entailing the development of national action plans was introduced. As a consequence of the Lisbon strategy, it was felt that better synergies on social inclusion and the education and training would be reached accompanied by clear benchmarks and indicators. Enforcement of anti-discrimination legislation in the area of education was mentioned and that special attention should be given to the minorities.

The Open Method of Coordination (OMC) was created in order to be an instrument for improving policy coordination in the field of social inclusion and social protection. Unfortunately, the OMC has not fulfilled these expectations. The mid-term review held in 2005, for which a report was prepared showed that the indicators used in the OMC had caused the objectives to become muddled and that the results achieved had been unconvincing. This failure is more evident in the case of social policies targeting Roma communities. In all of these cases (except Hungary), Roma have not been targeted in the OMC.

In 2010 the ambitious goals and benchmarks stated in the Lisbon strategy were revised and reformed. “Agenda 2020” is an adapted initiative that aims to continue to improve the actions and efforts developed within the Lisbon agenda.⁵⁶ The Roma are noticeably absent from the Integrated Guidelines, which were finalized in April 2010. However, in June 2010, the European Council adopted conclusions on “Advancing Roma Inclusion,” it states that progress should be made “where appropriate, within the framework of the Europe 2020 Strategy.” The Council states that mainstreaming should be undertaken in the fields of “fundamental rights, gender equality, personal security and protection against discrimination, poverty and social exclusion, regional cohesion and economic development, as well as in other fields that are key to the active inclusion of Roma, such as ensuring access to education, housing, health, employment, social services, justice, sports and culture, and also in the EU’s relations

⁵⁶ See the main action areas and proposed benchmarks for Agenda 2020 at http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators

with third countries.”⁵⁷ The retrospective commitment by the Council provides a legitimate basis for including the Roma, and for member states to set targets where reliable data is available. However, it is well known that data on Roma is not available in the majority of the states. In many cases the deficit of data is one of the reasons invoked by the authorities for not developing policies or undermines efforts to achieve policy goals and impede governments from making sound policy decisions.⁵⁸

It is currently difficult to measure the effects of EU policy with regard to the inclusion of Roma due to a lack of available data disaggregated on the basis of ethnicity. There is therefore a clear need for such data to be collected and relevant indicators to be devised.⁵⁹ So far the EU has taken a mainstreaming approach for tackling Roma related matters. However, it appears that this approach has had only limited impact.⁶⁰ While there are organizations that are supportive of the horizontal approach towards Roma inclusion some suggest that the creation of a single EU coordination structure is warranted to achieve sustainable impact and a high level presence in policies undertaken by the EU in order to increase the effectiveness of the EU’s activity in the area of Roma issues. The Reports of the European Commission and European Monitoring Bodies such as EUMC demonstrate this point by showing that the Lisbon Strategy has failed to curb the social integration of poor.⁶¹

Governments Responses

In the last decade, the Governments and/or Ministries of Education of the five countries subject to this study have elaborated a number of Roma-specific and related educational policy documents and priorities. The policy documents produced acknowledge the lower educational achievement of Roma children; the barriers for Roma to access quality education; the forms of segregated education for Roma; as well as incompatibility and weaknesses of certain educational models. The general aims set in these documents are:

⁵⁷ European Council, *Council Conclusions on Advancing Roma Inclusion*, 11.

⁵⁸ Open Society Institute, “No Data, No Progress,” 34.

⁵⁹ Hollo, *Equality for Roma in Europe*, 1.

⁶⁰ UNDP, “The Roma in Central and Eastern Europe,” 2–4

⁶¹ European Commission, *Commission Staff Working Document Lisbon Strategy evaluation document*. Brussels, 2010, 11–14.

- (i) integration of Roma in the educational systems
- (ii) improvement of the educational status of Roma, including school achievement at levels of education including university education
- (iii) improvement of the multicultural competences of teachers and other educationalists.

A common problem with these policy documents is the fact that structurally and financially the measures on the education of Roma are not part of mainstream educational policies. It could be argued that the educational programs for Roma are seen by the authorities as an “additional burden” and not as a response of the system to their educational needs. Many educational policies for Roma are piloted or implemented in very specific projects rather than included in national policies, often leaving deep systematic inequalities unchallenged.

In only a few instances have Roma-specific educational measures been incorporated in the general educational policy framework and funding secured through the state budgets. Financing of such measures is in many cases project based (see PHARE programs) and lacks sustainability. Furthermore, the impact of the measures envisaged in these policy documents is impossible to assess due to a lack of specific targets and quantifiable indicators about the state of the education of Roma. A lack of reliable data on education disaggregated by ethnicity makes the problem of monitoring and assessment even more complicated. Also, the paucity of clear responsibilities and sanctions for the responsible bodies for desegregation has contributed to weakening the impact of desegregation measures.

National Desegregation Legislation

As part of the EU accession process, and through donor driven initiatives, the states adopted quite extensive legislative measures to tackle the issues of segregation. For example, the Bulgarian Protection against Discrimination Act (2003) and Hungarian Equal Treatment Act (2003) contain a definition of segregation in education and prohibit it as a form of discrimination. The legal provisions were translated into national courts decisions that have found the existence of discrimination in cases of segregated schools (see Rostas’s chapter in this book). In some states like Romania⁶² segregation is prohibited by a ministerial order which does not

⁶² In Romania, since 2004 the Ministry of Education has banned segregation by developing several ministerial orders. In April 2004, the Ministry of Education and Research issued

have the same power as the Bulgarian⁶³ and Hungarian⁶⁴ legislative measures. Segregation in education is explicitly defined as a form of discrimination in the anti discrimination legislation of Bulgaria, and Hungary whilst in Romania the definition is defined in different ministerial circulars and guidance. Desegregation initiatives in Romania have been initiated in the framework of the PHARE project "Access to education for disadvantaged groups, with a special focus on Roma." Thus some activists from Romania claim the desegregation legislation was imported into Romania. The Romanian authorities were in fact very reluctant to address this issue and it took quite a long period to even acknowledge that segregation was a problem.

When discussing Slovakia, the situation is different as the education specific legislation usually does not explicitly address discrimination in clear terms. Discrimination in education is formally forbidden in the Constitution and by the Anti-Discrimination Act No. 365/2004.⁶⁵ Although there is a specific body responsible, the Slovak National Center for Human Rights, to oversee the implementation of the Anti-discrimination Act, allegations of discrimination in education have been investigated in individual cases by the State School Inspection and the Ministry of Education. However, the cases were not treated primarily as discrimination cases, but rather as failures in relation to other specific education statutes.

Slovakia's international-political orientation primarily aimed at EU accession influenced the government in 1998 to frame a resolution that created the "Office of the Government Plenipotentiary for Solving the Problems of Citizens Belonging to the Romani Minority," later in 2001 it was replaced by what was considered to be the more successful "Government Plenipotentiary for Romani Communities."⁶⁶ The "Basic Positions of Slovak Government's Roma Communities Integration Policy" was adopted in 2000 and ⁶⁷ acknowledged the high representation of Roma children in

Notification 29323/20.04.2004 on School Segregation. In it 2007 it issued a new notification (1540/19 July 2007) where the definition of segregation and the methodology for preventing and combating of segregation has been developed.

⁶³ Bulgarian Protection against Discrimination Act (2003).

⁶⁴ CXXV Act of 2003 on the Promotion of Equal Treatment and Equal Opportunities.

⁶⁵ Full text of the act available at, http://www.ilo.org/aids/legislation/WCMS_128039/lang-en/index.htm

⁶⁶ Friedman, "The Slovak Government Plenipotentiary for Romani Communities: From Form to Substance?" 2.

⁶⁷ Vláda Slovenskej Republiky, *Štatút splnomocnenca vlády Slovenskej republiky*.

special schools as a separate problem “requiring immediate attention.”⁶⁸ Slovakia adopted a new School Law in 2008 prohibiting enrollment in special education on the basis of social disadvantage and required informed consent as a condition for enrollment in such education. A second positive development, also in 2008, was the elimination of the perverse incentive for enrollment in special education created by the scholastic achievement criterion for the social scholarship the “Motivation Allowance.”⁶⁹

The establishment of Czech anti-discrimination legislation was long and drawn out. In addition the anti-discrimination legislation in the Czech Republic was very fragmented and consisted of more than 60 Acts and statutes. The Czech Republic was the last European state to adopt the EU Race Equality Directive into national legislation, and had intended to adopt the EU’s Racial Equality Directive from 2004 when it joined the EU. The Anti-Discrimination Act, was approved by the government in December 2004 and by the Chamber of Deputies in December 2004, but was rejected by the Senate in January 2006 and subsequently failed to pass the Chamber of Deputies in May 2006. However it was adopted in June 2009 by President Klaus.⁷⁰ In the Czech Republic there are not specific legal documents referring to desegregation.

To make a number of general points it should be noted that none of the countries in this review, have produced anti-discrimination laws with specific positive obligations for public institutions to ensure the implementation of the equal treatment principle; neither do they stipulate specific positive obligations to eliminate and prevent segregation in education. All the measures lack sanctions, obligations and specific measures to be undertaken by educational and other relevant authorities. Furthermore, in none of the legal frameworks is there a positive duty on public authorities to promote equality and desegregation and there are no specific measures to be carried out by the public authorities, educational and other relevant authorities, including carrying out ongoing monitoring and assessment of the outcomes of legislation. For instance, in none of the countries does the systematic mapping of segregated education exist.⁷¹ Although there are

⁶⁸ The basic positions of the Slovak Government’s Roma Communities Integration Policies, at: http://www.government.gov.sk/romovia/basic_information.php.

⁶⁹ In Slovakia, parents with children enrolled in special education received an additional amount as a social benefit of about €30.

⁷⁰ Strafeldova, “Czech Republic adopts Anti-Discrimination Act.”

⁷¹ The majority of the documentation of cases of segregation as well as studies and research are carried out by NGOs (ex. Bulgaria) and/or within PHARE projects (ex. Ro-

specialized bodies in most of the countries in Bulgaria (Commission for the Protection against Discrimination and the Equal Treatment Authority) in Hungary (Equal Treatment Authority) in Romania (National Agency for Roma), Slovakia (Slovak National Center for Human Rights) no regular monitoring and reporting on the implementation of desegregation policies is conducted.

In most cases monitoring falls to the authorities that are under the ministries of education school inspection bodies or regional authority to the inspection bodies. These bodies, however, do not have specific obligations to carry out a comprehensive assessment of government policies on Roma education and the results of their monitoring do not provide any clear picture on the progress. In all the countries there is no independent authority for conducting regular monitoring of the implementation of the government educational strategies for Roma. In addition, the lack of desegregated data makes the monitoring almost impossible.

Existing anti-discrimination laws prohibit segregation but do not go beyond this to require specific pro-active measures by public authorities when the law is broken. In all cases implementation, responsibilities, monitoring and financial allocation, sanctions for the educational institutions or other stakeholders are not clearly stipulated. A fact which makes the desegregation process or implementation of reparatory measures difficult.

Desegregation Measures

As has been noted segregation has different manifestations and patterns and the legal instruments to combat it are very diverse and in many cases vague and do not mention specific actions to achieve desegregation. Governments have been slow to translate rhetoric into action and too often a mainly project based approach on Roma education policy has impeded long term and systematic efforts to achieve desegregation.

On a general point policies addressed to Roma are usually included in the “policies for minorities” or policies for “disadvantaged groups” or other insular initiatives that are not included in the core educational policies. Funding is not secured through the state budgets, except for a few

mania 2003 and Slovakia 2002), and international organizations, with only a few exceptions undertaken by the government when specific funding is requested (as in Hungary).

exceptions such as Hungary where there are additional funds for integration and in Bulgaria. The financing of such measures is in many cases project based (see Phare programs) and lacks sustainability. Furthermore, the impact of the measures envisaged in these policy documents is impossible to assess due to the lack of specific targets and quantifiable indicators about the state of the education for Roma.

Despite the fact that school segregation in Roma has been acknowledged, school desegregation actions are almost non-existent in the Czech Republic and Slovakia. In Bulgaria the measures are very disparate and rely on international donor funding and local NGO initiatives. In Hungary, although it possesses one of the most articulated and firmest policies in its “National Integration Program,” which pledged to desegregate all schools by the year 2008, the implementation and financing have not been constant as the results were negatively affected by the resistance at the local level. In Romania the desegregation measures were implemented only within the PHARE project, by the school inspectorates without the involvement of other local stakeholders. As the legal basis in Romania was mostly ministerial orders the political changes of the ministers affected seriously the implementation of measures at the local level. No clear duties and/or sanctions applied to schools refusing to implement desegregation or otherwise opting out of the integration policy. The clear involvement of local authorities is crucial to ensure that school desegregation is implemented as is the Roma organizations and representative bodies. However, in many cases this has simply not occurred

Slovakia had a series of policy documents targeting Roma followed between 2003 and 2008. Through a PHARE project it produced in 2004 “Concept of Integrated Education of Romani Children and Youth, Including the Development of Secondary and Higher Education” which serves as the central education-specific document targeting Roma.⁷² A call for proposals entitled “Programmes and Courses for Pupils from Marginalized Romani Communities,” issued in February 2009 under the Operational Programme Education for 2007–2013, led to funding through the Ministry of Education for 50 school-based projects with an average project budget of approximately €168,000.⁷³ Forty-one of these projects, which were in the initial phase of implementation as of early 2010 are

⁷² Ministerstvo školstva Slovenskej republiky, *Koncepcia integrovaného*.

⁷³ This call was one of thirteen issued to date in Slovakia under the Operational Programme Education for 2007–2013. The average funding per project for all projects funded under the thirteen calls was approximately €501,000.

based in standard primary schools, with the remaining nine implemented by special primary schools.⁷⁴

In 2004 the Strategy of the Bulgarian Ministry of Education and Science for the Educational Integration of Pupils and Children from the Ethnic Minorities for the period 2005–2009 identifies among the specific problems facing Roma in education “isolation in kindergartens and schools in the Roma neighborhoods and in separate classes in the mixed schools” as well as “enrolment in special schools of children who are not diagnosed with mental disability.”⁷⁵ This document elaborates on activities such as a review of national legislation and development of proposals which enhance legal guarantees for the integration of Roma; identification of receiving schools and kindergartens; desegregation of schools and kindergartens by transferring the children to schools outside the Romani neighborhoods and development of yearly plans for transferring children by the municipalities.

The European Commission approved the National Strategic Reference Framework (NSRF) for 2007–2013,⁷⁶ in line with the Council Regulation No. 1083/2006. The NSRF is the country’s strategy to support actions in a number of thematic areas, such as human resources, infrastructure, governance and effective state administration. There are references to Roma covered elsewhere in other policies (include school and kindergarten desegregation in the sphere of education). It lists five on-going EU projects which are related to education. No future financial commitments are envisaged.

The OP “Human Resource Development” (HRD OP), adopted by the Bulgarian Government in September 2007 is the only program that has a specific focus and measures for Roma integration in the areas of education, health care, social service and labor market.⁷⁷ Roma are present as a specific target group both in the analytical and the strategic part of the program. In addition, there is a specific chapter “Areas of Assistance in

⁷⁴ Of the 432 projects funded under the thirteen calls, a total of 20 projects were based in special primary schools for children with mental disability, such that the nine projects implemented by special primary schools which were funded under the single Romani-specific call account for 45 percent of all projects financed by EU Structural Funds in special primary schools in Slovakia.

⁷⁵ The Strategy for Educational Integration of Children and Students from Ethnic Minorities, available at: <http://coiduem.mon.bg/Aktualizirana%20Strategia.doc>

⁷⁶ National Strategic Reference Framework of Bulgaria.

⁷⁷ The operational program “Human Resources Development,” was approved by the European Commission in September 2007.

Regard to Roma community,” which elaborates on combining targeted and mainstreaming approaches to social inclusion of Roma and providing a set of output and result indicators for measuring progress in the different areas.⁷⁸ “Access to education and training of vulnerable groups” is specifically targeted at disadvantaged minority groups with a focus on Roma. It envisages actions to enhance the education levels of vulnerable groups by increasing motivation for inclusion in the educational process, introducing multicultural education, continuing the process of desegregation, work with Roma parents and community.⁷⁹

The Hungarian government, by issuing its “Equal opportunities for the Roma,” reinforces the continuation of its policy of creating opportunities and eradicating discrimination for Roma in the areas of education, employment, housing, healthcare and culture. Since 2003, the Hungarian government has used normative integration payments in schools. The government has provided additional amounts of money for the schools that integrate multiple disadvantaged children. The Program from the “Last Bench” will be used to make sure that children unjustly classified as disabled can go back to normal school classes.⁸⁰

The Romanian legal framework and desegregation of Roma children in schools has been developed almost in parallel with the PHARE project “Access to education for disadvantaged groups, with a special focus on Roma.” Regarding the impact of the measures and good practices piloted and designed in previous PHARE projects (2001, 2003, 2004 and 2005) it is not easy to assess results regarding desegregation as the focus of the projects were on infrastructure training of the teachers but not mixing the schools. In parallel with PHARE some small desegregation projects were implemented by Roma NGOs in some cases using EU structural funds.

In the Czech Republic, the Ministry of Education promoted a number of measures including specific measures for desegregation.⁸¹ Usually, government documents on education include Roma in the controversial category of “children from socio-culturally disadvantaged backgrounds.”⁸²

⁷⁸ Ministry of Labour and Social Policy, “Operational Program Human Resources Development 2007,” 135–138.

⁷⁹ Ibid, 103–104.

⁸⁰ Ministry of Foreign Affairs, “New Dynamism for Hungary!,” 9.

⁸¹ Ministry of Education, Youth and Sports, Methodical instructions for the transfer of successful pupils from special to primary schools, (Guideline No. 28 498/99–24).

⁸² The socio-cultural disadvantage of Roma children is explained by the Government Roma Integration Policy Concept as “defects in the structuring of terms, in the language of instruction, and in the concept of discipline due to their different family upbringing.”

One of the most important and specific documents is the “Roma Integration Concept.”⁸³ The Concept indirectly refers to Roma by pointing to the fact that socio-culturally disadvantaged pupils are not ready to start their mandatory school attendance. The Concept does not propose any measures directly targeted at the elimination of the physical separation of Roma children in special remedial schools.

Officially after the Integration Concept special schools have been formally removed as a type of educational institution by the Czech School Act in 2005. In practice the schools were just renamed without changes in curricula, staff or the quality of education. Currently, in the schools the majority are Roma students, with no clear measures envisaged as to the improvement of the quality of education.⁸⁴ In addition, certificates from practical elementary schools are now equivalent to the one from mainstream elementary schools in order to access secondary schools. The updated version of the program does not provide any more specific mechanisms for eliminating physical separation of Romani children and Roma are educated in separate facilities, with an inferior curriculum and teachers with lower expectations.

In all the countries where the governments make use of the PHARE programs the main outcomes generally included the followings initiatives:

- (i) teachers trained in subjects like inclusive and multicultural education, active teaching methods, school based curricula development and implementation, second chance and remedial education programs;
- (ii) activities related with enrollment of Roma in schools and kindergarten, second chances; programs; after school/remedial teaching programs;
- (iii) trainings for school mediators;
- (iv) establishment of educational centers;
- (v) activities for parents participation in education;
- (vi) schools from disadvantaged communities already ensure a friendly educational environment
- (vii) Infrastructure and school equipments

The Concept on Early Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education.

⁸³ See Concept for Roma Integration, part 4.4. Affirmative Action.

⁸⁴ Amnesty International, “Injustice Renamed Discrimination in Education of Roma, 14–15.

In most of the countries, the placement of children from separate schools and classes into integrated education has been carried out predominantly within projects run by non-governmental organizations (as in Bulgaria), and/or within PHARE projects, (as in Romania). Often there has not been a clear perspective for the transformation of the experimental activities into government policy. Neither the termination of special schools nor other clear outcomes related to desegregation have been achieved in the Czech Republic and Slovakia. In 2010 an EU report which referred to segregation stated that “Segregation remained one main obstacle to Roma inclusion, but no general conclusions could be drawn from the figures on desegregation presented by several Member States.”⁸⁵ A conclusion which reflects the general lack of progress made.

Financing

In many cases, the sources of funding for the implementation of educational measures for Roma are government grant schemes and pre-accession funds (PHARE) or other EU instruments. Project-based interventions are temporary, usually determined by the international requests see the regular reports for joining the European Union. As a result, these policies are not systematically funded, and the interventions are on the project-base without continuity and sustainability. Activities undertaken as part of PHARE funded projects have often been discontinued after the end of the project. Failure to ensure continuity of the actions meant that some investments and premises developed in Phare projects are currently wasted. An example is the resources spent on training teacher assistants. Lack of mechanisms for the employment of teacher assistants in some countries has resulted in serious disproportion between the number of persons trained and the number of persons employed as teacher assistants. Alternatively, good practices emerging from such projects have not been transformed into consistent policy measures.

Hungary was one of the first states to provide integration normative funding—an increase of the normative funding from central government for the integration of children with social, health and mental disadvantages in mainstream education. Even when financial schemes provided from central budgets or which are project-based exist it relies on the initiatives of school authorities and/or individual schools. As there are no obli-

⁸⁵ European Union, *Roma in Europe*, 19.

gations for the authorities this reduces the motivation to apply for the grant and those that do are subject to the vagaries of the bureaucratic demands of applying and competitive nature of the allocation.

In some instances, local authorities do not use the financial opportunities for the education of Roma, often as a result of resistance from local majority communities which do not favor integration of Roma in education.⁸⁶ Also, when the resources are distributed from the central level the resources cannot be guaranteed to reach the schools which need it most. Distribution of funds to specific schools is within the discretion of school authorities hence there is a lack of transparency and proper regulation. Schools with a high proportion of Roma receive less funding even though they are in a worse condition than those schools attended predominantly by non-Roma. A pattern which can be interpreted as another indicator of the discrimination and inequality in mainstream state education. Another impediment is that Roma are included in the “disadvantaged” category and therefore it is difficult to assess whether the finance has been used for desegregation purposes. In addition, the grant allocated needs to be earmarked, and used for the integration purposes as there have been cases where the money was used for the general running costs of an institution.

Financial incentives for schools to integrate Romani children are an important but not necessarily efficient method for achieving desegregation. However, financial incentives have no effect without mixing the children in a given school or interschool. There are schools with substantial numbers of Roma children as a result of the integration incentive. In addition to this the freedom of school choice allows parents to decide not to enroll their children in certain schools and schools are free to choose which children they admit—actors which can also frustrate desegregation.

Another initiative that is meant to address the segregation issue has been developed in Bulgaria. The Bulgarian government established the Center for Educational Integration for Children and Students from Ethnic Minorities which receives part of the funds from the government budget

⁸⁶ Molnár, Emília and Csaba Dupcsik (2008) “Country Report on Education: Hungary.” *EDUMIGROM Background Papers*, Budapest: Central European University, Center for Policy Studies, 21–23. Since 2003 Hungary has been implementing an integration incentive for “severely disadvantaged children” as part of the mainstream government education policy. http://www.edumigrom.eu/sites/default/files/field_attachment/page/node-1817/edumigrombackgroundpaperhungaryeducation.pdf

and additional funding from international donors.⁸⁷ The Center has started to develop desegregation projects with the municipalities.

Special funding for projects to help Roma in the Czech Republic, including projects targeted at Roma education, is allocated from the state budget for the “Implementation of the Concept of Roma Integration,” which has a total allocation of CZK 110 million per year. As the Czech government itself admitted in the Roma Integration Policy Concept 2005 “government spending in this area lacks effectiveness as it places too much emphasis on ethnic rather than on social approaches, on ad-hoc and short-term interventions rather than on long-term priorities.”⁸⁸ The case of Romania is a cause of particular concern as since the PHARE program no public investment nor central budget allocation for Roma educational desegregation has been provided.

Following the financial crisis in an age of austerity some politicians may be even more hesitant to sanction greater levels of expenditure on Roma programs but an important case can be made for the cost effective nature of desegregation.⁸⁹ It has long been recognized that educational exclusion is an important contributory factor to acute economic and social exclusion for Roma. This legacy of exclusion precludes Roma from equal participation in the labor market which leads for many to welfare dependency thus reducing future tax revenues. Hence, segregation presents a social and economic cost to society as a whole and is a powerful argument which can be mobilized to justify greater state expenditure on school desegregation.

Decade Watch

Important evidence as to the progress states have made in desegregation can be found in reports by Decade Watch which has assessed the progress made by participating countries in their progress in the achievement of aims and targets: The following table indicates the progress that activists felt had been made on the issue of segregation.

⁸⁷ Ministerski svet (Council of Ministers, Decree No. 4/11 January 2005), art. 10.

⁸⁸ Council of Europe, “Follow Up Report on the Czech Republic (2003–2005),” para.15.

⁸⁹ Kertesi, “Expected Long-Term Budgetary Benefits,” 7.

Country	Comparative Score	Education in General	Desegregation (measures available)
Hungary	2.29	3.80	4
Bulgaria	1.84	1.60	1
Slovakia	1.82	1.60	0
Czech Republic	1.76	1	0
Romania	1.72	2.40	2

Score – 0 = No Action 1 = Sporadic measures, not regular or systematic 2 = Regular measures, not systematic or amounting to a pragmatic program 3 = Government program advanced but not integrated into policy 4 = Integrated policy setting standard for government action

Above table based on data in *Decade Watch Roma Activists Assess the Progress of the Decade of Roma Inclusion 2005–2006*⁹⁰

Decade Watch: Results of the 2009 Survey, in its third report assessing government action toward implementing commitments made under the Decade of Roma Inclusion. With the 2009 report, Decade Watch changed its focus from evaluating these “inputs” to providing an assessment based upon the independent—and subjective—opinions of 300 experts, who commented on both the current situation of Roma in their countries and progress made in the integration of Roma over the last five years. The Education impact indices were based on answers to questions about the assessment of the impact of the programs in seven education policy fields including desegregation.

Country	Desegregation Score
Romania	3.71
Czech Republic	3.22
Hungary	2.45
Slovakia	2.00
Bulgaria	1.50

Score: 5 points (very positive); 4 points (positive); 3 points (neutral); 2 points (negative); 1 point

(very negative); 0 points (don’t know).

Above table based on table on education impacts (Decade Watch Results of the 2009 Survey, 53).⁹¹

⁹⁰ Decade Watch, “Roma Activists Assess the Progress of the Decade of Roma Inclusion.”

⁹¹ Decade Watch, “Romania Report 2010: Mid Term Evaluation of the Decade of Roma Inclusion.”

Programs addressing desegregation received the lowest assessment in terms of impact. Only 32.46 percent assessed the impact of such programs as (very) positive; with an additional 20.21 percent stating that these do not exist (Decade Watch, Results of the 2009 Survey, 77). The data collected as a result of the Decade Watch assessments present serious concerns as to the progress made and determination of governments to desegregate (See appendix for further data)

Where Next?

It is evident from this survey of the actions and measures produced internationally and nationally regarding the educational inclusion of Roma pupils in Bulgaria, Czech Republic, Hungary, Romania and Slovakia that much remains to be done to eradicate segregation from the learning experiences of Roma pupils. At the time of writing an important development that could provide the impetus for significant change is the European Union Framework for Roma National Integration Strategies which was introduced as part of Hungary's holding of the Presidency of the European Union in 2011. The report on the EU Roma Framework on Roma inclusion (2010/2276/INI) Committee on Civil Liberties, Justice and Home Affairs drafted by the MEP Livia Járóka is an important part of the process of devising a Roma Framework which contains a motion for the European Parliament which was debated and approved in March 2011 and sets out the details of the proposed Roma Framework including a number of measures on Roma educational segregation. One declared objective is "abolishing school and classroom segregation, also by creating an inclusive school climate and employing Roma school mediators" (10, see also 8, 13, 19, 41, 43). The Roma Framework envisages the European Commission to "gradually introduce compulsory institutional guarantees for the mainstreaming of nondiscrimination and anti-segregation measures, taking into account Directives 2000/43/EC and 2004/113/EC, and also monitor such measures and fight stigmatisation" (14/47). Part of the proposed leverage is a proposal for "new regulations on the allocation of the Structural Funds to set conditionality concerning the elimination of segregation and the assurance of equal access of the Roma to public services; takes the view that equal opportunity and anti-segregation plans should also be prepared at local level, based on measurable indicators and concrete actions" (Point 50, 19/47).

Some of these proposals may remedy the defects of previous strategies to tackle segregation as outlined in this chapter by providing monitoring,

clear statutory instruments and penalties for failure. The strengths and weaknesses of the EU Roma Framework in relation to segregation will be returned to in the conclusion of this book. However, as this chapter has demonstrated success depends on the collection of clear data, clear objectives, sufficient resources but also effective partnerships and “buy in” and support from key stakeholders including government, schools, teachers, Roma NGOs and Roma parents and pupils and the wider community. The absence of all these actors in the mix to desegregate has often limited a greater grassroots impetus for reform and the forging of local partnerships between educators, Roma and NGOs. Furthermore, there has been a failure to persuade the majority population, which has tended to oppose or subvert reform through opposition and “school flight.” If desegregation and greater educational inclusion is to be achieved then policies will be needed in Bulgaria, Czech Republic, Hungary, Romania and Slovakia which ensure:

- (i) Conformity to EU and international law on equality and equal access to education and ensuring this is reflected in domestic law.
- (ii) Pedagogical reform based on a human rights related approach to education which improves teacher training and educational approaches in the classroom, including inclusive curricula, fair diagnostic tests with proper informed consent and access to quality pre-school education.
- (iii) The collection of reliable datasets collected through ethnic monitoring which indicate more accurately the scale, nature and location of segregation, which should be accompanied by rigorous inspection and monitoring of clearly defined and expected outcomes.
- (iv) Public awareness and education of the wider public as to the virtues both moral and economic of desegregation.
- (v) Greater levels of resources and governmental support for the development of more localized Roma NGOs with grassroots constituencies thus providing key partners in Roma desegregation projects.
- (vi) Proper funding for desegregation and educational inclusion and positive action measures to address educational disadvantage and to tackle social, economic and spatial exclusion.⁹²

⁹² Open Society Institute, “10 Goals for Improving Access to Education for Roma.”

The support for segregation in the region is still significant and should not be under-estimated as reflected in the Slovak Prime Minister Robert Fico's assertion in 2010 that Roma children should be "put into boarding schools and gradually detached from the life they live in Roma settlements."⁹³ In similar vein Gábor Vona the leader of the Hungarian far-right Jobbik Party declared that Roma children should be educated in special boarding schools to break the cycle of crime that is passed on through generations in the Roma community.⁹⁴ Thus the desegregation of Roma education presents huge challenges for European society in the twenty-first century. However, Roma desegregation may prove to be a defining moment for the broad equality agenda across Europe and thus if resolved will be to the benefit of all European citizens.

Appendix

Country	National Action Plan References to Segregation and Aims	Concerns/Comments of the 2005–2006 Decade Watch	Concerns/Comments of the 2007 Update
Bulgaria	Development of timetable for desegregation of schools and kindergartens in the detached Roma quarters. Moving the children out of the Roma quarters and closing the segregated schools and kindergartens. The necessary transportation will be provided taking into consideration the parents' preferences.	School buses provided through a nationwide ministry of education program are not being used to assist desegregation. 2006 national report on strategies for social protection and social inclusion mentions desegregation as a goal. (30)	Most significant advancement in area of education has been inclusion of school desegregation in the operational human development, co funded by EU structural funds. (24)

⁹³ Decade Watch, 34.

⁹⁴ Controversy over comments about Roma by Hungarian far-Right leader Budapest, 25. 2. 2011 16:29, (ROMEIA) http://www.romeia.cz/english/index.php?id=detail&detail=2007_2195

Czech Republic	Enrollment of socio-culturally Disadvantaged children in mainstream, integrated primary schools (as opposed to schools or classes with different curricula for pupils with special educational needs).	Although a court case alleging discrimination and segregation in the country's education system is before the ECHR the Czech Government has yet to acknowledge the dimensions of Roma educational segregation. (34)	Transformation of remedial schools into regular schools had little impact on segregation. There are no specific measures aimed at desegregating the former remedial schools. Many remain with a predominantly Romani student body and continue to teach a substandard curriculum. (28)
Hungary	Expansion of the scope of integrated educations, desegregation in public education. A precondition of access to resources should be the existence of segregation-free residential conditions and education. The dissolution of all the segregated classes and schools.	Multiple forms of segregation exist. Primary objective of the education system since 2002 has been to eliminate segregation. (36)	Evidence that efforts to desegregate have been met with resistance by school authorities and funding for such has been misused, evidenced by the fact that there continue to exist homogenous Roma schools in 170 settlements. (31)
Romania	References to measures to stop the segregation of Roma children (and adults) in schools (kindergarten, elementary schools, high schools and universities)	By government's own admission educational segregation is a systematic problem. The ministry of Education has adopted a notification which mandates desegregation. (42)	Sought to eliminate segregated schooling by enactment of ministry of education order 1540/2007 and set specific tasks for school inspectors with preventing Roma segregation While the segregated education of Roma has been

			acknowledged by the government as a serious barrier to equal education opportunities, the practical steps made to reduce this segregation have not been commensurate with the extent of the problem.
Slovakia	A reduced rate of Roma students in special elementary schools and special training facilities.	The major challenge remains segregation though the Slovak Government has shown itself more willing to deal with the issue in recent years. (46)	The Government has yet to demonstrate progress in reducing the high number of Roma in segregated education especially over representation in remedial schools. (42)

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CHAPTER TWO

Setting the Roma Policy Agenda: The Role of International Organizations in Combating School Segregation

ANITA DANKA¹ AND IULIUS ROSTAS

“...of all forms of discrimination, those that occur in education are the most pernicious because they affect the very essence of the individual and society, namely the forming of the mind – and the most abhorrent – because the victims are first and foremost children.”²

I. Context

One important strategy employed by Roma and human rights activists to fight against segregation and to promote desegregation in Central and Eastern Europe has been to appeal to the international organizations to exercise pressure and “name and shame” those governments that did not take resolute actions to address the increasing concern of Roma school segregation in these countries. “The absence of political will to implement far-ranging desegregation policies, coupled with the lack of effective legal avenues to challenge the racial segregation of Roma in the educational systems of many countries, forced human rights and Roma rights activists to turn to the international community to mobilize shame and generate pressure for change.”³

International and European inter-governmental organizations and bodies were the target of the advocacy actions by Roma rights groups since they played an important role in shaping the human rights agenda of the national

¹ The author works at the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The opinions and information this article contain do not necessarily reflect the policy and position of ODIHR.

² Provisional summary records of the meeting of the special Committee of governmental experts on the preparation of a draft international convention and recommendation on the various aspects of discrimination in education, 13–29 June 1960 ED/DISC/SR.1. 3. Available at <http://unesdoc.unesco.org/images/0014/001443/144396mb.pdf>

³ Rostas, *Desegregation Advocacy Strategies*, 117.

governments in Central and Eastern Europe. They constituted a framework for advancing different human rights issues, including the protection of minorities in the early 1990s. Three reasons were important in this context. Firstly, following the political transition in 1989, Euro-Atlantic integration became a major objective of these countries. These states wanted to adopt the values and norms of the western liberal democracies, among them the respect for human rights and the protection of minorities.

The second factor is that the protection of human and minority rights became a precondition for the countries' accession into the Euro-Atlantic structures. Guided by the principle that human rights are not the internal affairs of a state but "matters of direct and legitimate concern" of the international community,⁴ the Conference for Security and Cooperation in Europe (CSCE) which became in 1992 the Organization for Security and Cooperation in Europe (OSCE) constitute such a framework where governments come together, discuss and commit themselves to address issues of human rights and minority protection as part of the security issue. Non-governmental organizations also have the possibility to address directly the OSCE participating states at the various "human dimension" events.⁵ As early as in 1990 at the CSCE meeting in Copenhagen the Roma activists managed to put the human rights concerns of Roma onto the agenda and of the CSCE in the context of racism.⁶ Just a couple of years later the European Roma Rights Center, a Budapest-based international NGO, already raised concerns regarding the separation of Roma children from their non-Romani peers in the Czech Republic at the Human Dimension Implementation Meeting, the annual human rights conference of the OSCE, stating that the country had an "effectively segregated school system."⁷

⁴ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, October 3, 1991.

⁵ "Human dimension" is understood in the OSCE terminology as a set of norms and activities related to human rights, democracy and the rule of law. OSCE/ODIHR, *OSCE Human Dimension Commitments*, vol. 1, *Thematic Compilation*, 3rd edition, 2011, xvi.

⁶ Interview with Nicolae Gheorghe, Bucharest, July 27, 2009. Para. 40 of the Concluding Document of the Copenhagen Meeting included the following reference to Roma: "The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. *In this context, they also recognize the particular problems of Roma (gypsies).*" (emphasis added)

⁷ *Statement of the ERRC at the OSCE Implementation Meeting on Human Dimension Issues*, November 21, 1997, available at: <http://www.errc.org/cikk.php?cikk=148>. It was for the first time when the separation of Roma children from their peers within schools was defined as "segregation."

The establishment of the post of the OSCE High Commissioner on National Minorities (HCNM) in 1992 was a reflection of the OSCE participating States' concern with national minority rights.⁸ Just two years later, on the recommendation of the HCNM, the participating States decided to appoint a contact point for Roma and Sinti issues within the Office for Democratic Institutions and Human Rights (ODIHR), the main human rights watchdog of the OSCE.⁹ Later it grew into a department, which is today still the only unit within the OSCE structure which dedicates its work entirely to the human rights issues of one particular ethnic group. In 2003 the OSCE participating states managed to endorse a full action plan aimed at the sustainable integration of Roma and Sinti within the OSCE area.¹⁰

The Council of Europe (CoE) imposes as a condition on the countries seeking admission the protection of human rights in accordance with the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). With the adoption of the Framework Convention for the Protection of National Minorities in 1995 by the CoE, the first legally binding multilateral instrument devoted entirely to the protection of national minorities, clearer standards were set for CoE signatory members as regards minority protection.¹¹

All the countries examined in this book ratified the different United Nations instruments that pose obligations to the ratifying states as regards the right to education and the right not to be discriminated against in the enjoyment of other rights, such as education. Some of them even specifically ban racial segregation. The most relevant binding treaties are: the UNESCO Convention Against Discrimination in Education (CDE); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC). Except for CDE¹² these documents provide also for independent

⁸ Helsinki 1992 Decisions II.

⁹ Budapest 1994 Decisions VIII.

¹⁰ Ministerial Council Decision No. 3/03 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, <http://www.osce.org/odihr/17554>

¹¹ On this specific issue, Judith Kelley provides a detailed analysis on the case studies on Hungary, Romania, and Slovakia in relation to CoE admission. Kelley, J. *Ethnic Politics in Europe*.

¹² There is no independent monitoring mechanism in place other than periodic reporting of the State Parties to the UNESCO General Conference when it comes to the UNESCO Convention against Discrimination in Education.

mechanisms for monitoring the implementation of the treaty obligations by the ratifying parties through the periodic country reporting procedures. In addition, the Human Rights Committee (HRC)¹³—overseeing the implementation of ICCPR—and the Committee on the Elimination of Racial Discrimination (CERD)¹⁴ may, under particular circumstances, consider individual complaints or communications from individuals.¹⁵ Roma rights advocates helped to put and—where needed—to keep Roma school desegregation on the agenda of the governments by contributing to the assessment of the treaty monitoring bodies through submitting alternative reports and complaints.

By far the most influential external factor on the human and minority rights situation, especially Roma rights, in Central and Eastern Europe was the European Union enlargement process.¹⁶ In its Copenhagen European Council of 1993, the EU has set clear standards for countries seeking membership. There are three types of criteria to be satisfied by the states wishing to join the EU—political, economic and the ability to take on the obligations of EU membership. The political criterium consists of: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The opening of negotiations was conditioned on the satisfaction of the political criterium. Moreover, the candidate States had to adopt the European Union's anti-discrimination *acquis* before joining. Since the mid 1990s the situation of Roma became a key issue in the EU's relations with the prospective member states, which is due to the successful advocacy of the Roma-rights organizations and the need of EU policy makers to respond to the growing Roma migration into Western Europe.¹⁷ "As Roma activists emerged and began to

¹³ Based on the First Optional Protocol to ICCPR the Human Rights Committee is able to examine individual complaints with regard to alleged violations of the Covenant by States parties to the Protocol.

¹⁴ The CERD may consider individual communications relating to States parties who have made the necessary declaration under article 14 of the Convention on the Elimination of Racial Discrimination.

¹⁵ Although the Optional Protocol to ICESCR was adopted on December 10, 2008 by the General Assembly making it possible for the Committee on Economic, Social and Cultural Rights (CESCR) to receive communications submitted by or on behalf of individuals or groups of individuals, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant, the Protocol is not yet in force owing to the lack of sufficient amount of ratifications.

¹⁶ O'Nions, *Minority Rights Protection in International Law*, 9.

¹⁷ H. Ram, Melanie and Thomas T. Holyoke, *From the Sidelines to the Headlines: How the Roma Gained a "Voice" in European Politics*, Presentation at the Annual Meeting

lobby on the issue, the EU began to criticize states that wished to join for the treatment of their Romani populations and compelled them to reform their legislation, establish new institutions, and make efforts to change social attitudes and root out discriminatory practices.”¹⁸ The Roma issues had been included in the regular progress reports issued on the candidate countries by the Commission, and the improvement of their situation became a precondition for countries in Central and Eastern Europe to join the European Union.

The third factor that had an important bearing on the international organizations’ role in framing the issues on the governments’ agenda, including Roma school desegregation, was the donor role performed by some of these institutions. Different UN agencies (UNDP, UNICEF, UNAIDS), the Council of Europe, OSCE and, most importantly, the European Commission have funded and supported various initiatives to assist social change in Central and Eastern Europe. They have provided funds to these governments but also to different NGOs. These international and regional organizations have coordinated their efforts to assist social change with the activities of the private donors in the region.

II. The Limits and Obligations of the States

“Education can be a means to retain as well as to eliminate inequality.”¹⁹ Often characterized as an “empowerment right” education enables the individual to experience the benefits of other rights, such as the right to political participation or freedom of association. Moreover, education enhances social mobility and promotes the realization of other social and economic rights, such as the right to work or to health.²⁰

International and European conventions and norms confirm the right of every child to be educated to his/her fullest potential, without discrimination. The right to education is understood to mean the right to quality education.²¹ Segregated setting prevents the right of every child to be edu-

of the American Political Science Association, Philadelphia, Pennsylvania, August 2003, 4.

¹⁸ H. Ram, Melanie, *Anti-discrimination Policy and the Roma: Assessing the Impact of EU Enlargement*, 492–93.

¹⁹ Tomaševski, “Racism and Education.”

²⁰ Coomans, “In Search of the Core Content of the Right to Education,” 220.

²¹ As an essential feature of education, the CESCR lays down “acceptability” in the so-called 4A scheme. Please see details in the next section of the article.

cated to his/her fullest potential as it denies equality of opportunity. Therefore, segregation is perceived to violate a range of fundamental rights, such as the right to education, the right of non-discrimination in the enjoyment of protected rights (i.e., education) or the right not to be treated in a degrading manner. Besides the international and regional treaties laying down the general rules regarding the right to education there are ample guidelines found in non-legally binding resolutions, recommendations, declarations or general comments setting the normative content of these rights. Segregation is generally not explicitly prohibited under international and regional human rights treaties. The following sections take stock of the relevant international and regional human rights standards and political commitments that are most relevant for the issue of segregation in education.

It is also important to keep in mind, that the right to education, like all human rights, imposes three types or levels of obligations on the states: the obligations to respect, protect and fulfill, the latter two requiring positive measures from the States. The obligation to respect requires States to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States to take measures that prevent third parties from interfering with the enjoyment of the right to education.²² The obligation to fulfill requires States to take positive measures to facilitate, provide and promote access to rights. It includes an obligation to remove obstacles to its full enjoyment and the implementation of measures to modify discriminatory social and cultural patterns which result in the disadvantage of vulnerable groups.²³

The promotion of equality of opportunity in education both in law and in fact requires not only the elimination of discriminatory practices, but also the adoption of temporary special measures to bring about equality in fact with regard to education.²⁴

²² CESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/C.12/1999/10. (1999) paras 46–47. Available at <http://www.fao.org/righttofood/KC/downloads/vl/docs/AH353.pdf>

²³ International Commission of Jurists, Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability, Geneva 2008, 48.

²⁴ Report of the Special Rapporteur on the right to education, A/HRC/17/29. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-29.pdf> For more details on temporary special measures please see Section II B.

A. Education as a human right

Within the realm of the United Nations the right to education has been recognised already in the *Universal Declaration of Human Rights* adopted in 1948. This was the first international instrument to declare education as a human right, and—such as the other rights enumerated in the Declaration—has become part of customary international law. Article 26 of the Declaration proclaims not only the right to education but also prescribes its content: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory... education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among racial or religious groups.”

Among the legally binding international treaties it is incorporated in ICERD (Article 5),²⁵ ICESCR (Articles 13 and 14),²⁶ the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (Article 10)²⁷ and CRC (Articles 28, 29, 30).²⁸ Based on the Child’s Convention governments have a legal responsibility to ensure the best interests of the child.²⁹ The Convention reiterates the need for access to education to be free from discrimination,³⁰ and emphasizes that this right must be implemented progressively. Moreover, based on the Convention the States must do more than simply provide access to compulsory education. They are to take steps to ensure that children actually attend schools.³¹ As to the quality of education the Convention provides, among others, that “the education of the child shall be directed to the de-

²⁵ <http://www2.ohchr.org/english/law/cerd.htm>

²⁶ <http://www2.ohchr.org/english/law/cescr.htm>

²⁷ <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article10>

²⁸ <http://www2.ohchr.org/english/law/crc.htm> The right to education is also guaranteed by articles 30, 43 and 45 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and article 24 of the Convention on the Rights of Persons with Disabilities.

²⁹ See Convention on the Rights of the Child, Article 3(1): “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

³⁰ *Ibid.*, Article 28(1).

³¹ *Ibid.*, Article 28(1)(e).

velopment of the child's personality, talents and mental and physical abilities to their fullest potential."³²

As to the normative content on the right to education, in its General Comment No. 13 the Committee on Economic Social and Cultural Rights (CESCR) explains that "education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."³³ Education shall be directed to the human personality's "sense of dignity," it shall "enable all persons to participate effectively in a free society," and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups.³⁴ The Committee also lays down the essential features of education in the so-called 4A scheme emphasizing that education must be available, accessible, acceptable and adaptable.³⁵

³² Ibid. Article 29(1)(a)

³³ CESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/C.12/1999/10. (1999). Para. 1.

³⁴ CESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/C.12/1999/10. (1999) Para. 4.

³⁵ a) Availability—functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility—educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination—education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

Physical accessibility—education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

Economic accessibility—education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all," States parties are required to progressively introduce free secondary and higher education;

The right to education has also been incorporated into various treaties within the Council of Europe. Article 2 of Protocol No. 1 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) adopted in 1952 states: “No person shall be denied the right to education.” Other relevant treaties are the European and revised European Social Charter (1961 and 1996)³⁶ and the Framework Convention for the Protection of National Minorities (1995).³⁷

Relevant documents within the realm of the OSCE are the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990, Part IV, Article 32 and 34) the Hague Recommendations Regarding Education Rights of National Minorities (1996) and the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2003). The Action Plan dedicates a specific section to the equal access of Roma to education. It considers education “a prerequisite to the participation of Roma and Sinti people in the political, social and economic life of their respective countries on a footing of equality with others.”³⁸

B. Right not to be discriminated against in the enjoyment of the right to education

The prohibition of racial discrimination is recognized by Articles 2 and 7 of the *Universal Declaration of Human Rights*. Racial discrimination is defined by Article 1 of ICERD to include “any distinction, exclusion,

(c) Acceptability—the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

d) Adaptability—education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. See CESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/C.12/1999/10. (1999) para. 6.

³⁶ Article 17 of the revised charter deals with the right of children and young persons to social, legal and economic protection.

³⁷ “The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.” Article 12 (3)

³⁸ Two recent Ministerial Council decisions reinforced the commitments made in the Action Plan: Ministerial Council decision no. 6/08 : enhancing OSCE efforts to implement the action plan on improving the situation of Roma and Sinti within the OSCE area (2008) and the Ministerial Council Decision 8/09: Enhancing OSCE Efforts to Ensure Roma and Sinti Sustainable Integration (2009).

restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” The prohibition of both direct (by purpose) and indirect discrimination (by effect) is furthermore reiterated by the CERD, which has interpreted the ICERD to include prohibition of overt discrimination as well as the prohibition of facially neutral acts that have “an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin.”³⁹

CERD speaks of the responsibility of Parties to prohibit and eliminate discrimination and to guarantee equality before the law in the enjoyment of the right to education.⁴⁰ CERD adopted a General Recommendation on the discrimination against Roma in 2000 in which it calls on States to review and enact or amend legislation, as appropriate, in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with ICERD and to “adopt and implement national strategies and programmes and express determined political will and moral leadership, with a view to improving the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organization.”⁴¹ The General Recommendation also includes measures in the field of education. It calls on States, among others, to “support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.”

The ICESCR states: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (art. 2). CESCR commentary to article 13 of the ICESCR indicates that one of the components of the right to education is that education be “accessible to all, especially the most vulnerable groups,

³⁹ See Office of the High Commissioner for Human Rights, Definition of discrimination (Art. 1, para. 1): 22/03/93. CERD General recom. 14. (General Comments), at: [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CERD+General+recom.+14.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CERD+General+recom.+14.En?OpenDocument).

⁴⁰ Article 5.

⁴¹ General Recommendation No. 27: Discrimination against Roma: 2000.08.16. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b)

in law and in fact, without discrimination.”⁴² Furthermore, while many components of the right to education—like any other economic, social or cultural right enshrined in ICESCR—are subject to progressive realization within the context of the maximum available resources, the prohibition against discrimination enshrined in article 2 (2) of the Covenant “applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”⁴³

The CESCR considers a violation of the right to education also the failure to take measures which address de facto educational discrimination.⁴⁴ “States parties must closely monitor education—including all relevant policies, institutions, programmes, spending patterns and other practices—so as to identify and take measures to redress any de facto discrimination.”

Racial discrimination in the enjoyment of human rights is also prohibited by Article 2(1) of CRC.⁴⁵

Among the European instruments, the ECHR states: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (art. 14). Article E of the revised European Social Charter declares, that “the enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

In the European Community law direct and indirect discrimination with respect to, among other things, the enjoyment of the right to education or housing is prohibited under the Council of the European Union Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Race Equality Directive*). For the purposes of the *Race Equality Directive*, “direct discrimination” is defined as having occurred “where one person is treated less favourably than another is,

⁴² E/C.12/1999/10, CESCR General comment 13 para. 6 (b).

⁴³ E/C.12/1999/10. Para 31.

⁴⁴ Para. 59.

⁴⁵ “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (art. 2). (1).

has been or would be treated in a comparable situation on grounds of racial or ethnic origin” (EU Directive Art. 2(2)(a)), while “indirect discrimination” occurs “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (EU Directive Art. 2(2)(b)). The directive prohibits direct or indirect discrimination based on the grounds of racial or ethnic origin, including in the field of education (art. 3 (g)).

The prohibition of discrimination based on race, language, ethnic origin or affiliation to a national minority also appears in Article 21 of the Charter of Fundamental Rights of the European Union.⁴⁶

Paragraph 63 of the 1989 Concluding Document of the Vienna Meeting of the CSCE (hereafter, Vienna Document) affirmed that CSCE participating States would “ensure access by all to the various types and levels of education without discrimination as to race, colour, sex, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Report of the Geneva Meeting (1991) made clear that participating States are required to “take the necessary measures to prevent discrimination against individuals, particularly in respect of ... education, on the ground of belonging or not belonging to a national minority.”

There are several human rights treaties, commitments that contain general guarantees of equal protection and prohibitions against discrimination that are equally applicable to education.⁴⁷

⁴⁶ Article 21 of the Charter, governing non-discrimination, provides that:

“1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

⁴⁷ Article 26 of ICCPR contains a general non-discrimination clause guaranteeing equality before the law and equal protection for all: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 6 (2) of the Framework Convention requires from the ratifying states to undertake appropriate measures to protect persons who may be subject to discrimination as a result of their ethnic, cultural, linguistic or religious identity.

Protocol 12 to the European Convention on Human Rights (ECHR) states at Article 1: “The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, nati-

Various international instruments also provide for the possibility of using temporary special measures “to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms,” which do not constitute discrimination. CESCER stipulates that “the adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.”⁴⁸ In the area of racial discrimination ICERD states: “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”⁴⁹ Similar provisions are included in the Framework Convention on the Protection of National Minorities⁵⁰ or the Race Equality Directive.⁵¹ The OSCE Action Plan on Roma also foresees a range of special measures, including in the area of education, in line with ICERD.

onal or social origin, association with a national minority, property, birth or other status.” Within the OSCE the general right of non-discrimination and equality in respect of national minorities was established already in 1975 in the Helsinki Final Act and was reaffirmed later in other documents such as in paragraph 31 of the Copenhagen Document, in 1990. The Report of the Geneva Meeting (1991) articulated a Roma-specific commitment: “The participating States are ready to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinary residents in their State and the rest of the resident population.”

⁴⁸ E/C.12/1999/10. Para. 43.

⁴⁹ Article I, Para. 4 .

⁵⁰ Article 4 (2).

⁵¹ Article 5. Para. 17 of the Preamble states: “The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.” <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

C. Prohibition of racial segregation in education as a form of discrimination

Although racial segregation is a particularly vicious form of discrimination only a handful of international and regional human rights instruments mention it expressly:

The *UNESCO Convention Against Discrimination in Education* (CDE) (1960) is the only international binding instrument that expressly prohibit segregation in education based on race.⁵² Under Article 1 of the Convention the term “discrimination” includes any distinction, exclusion, limitation or preference bases on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, which has the purpose or effect of nullifying or impairing equality of treatment in education, in particular “establishing or maintaining separate educational systems or institutions for persons or groups of persons.”⁵³ According to Rob Kushen “this provision would clearly apply to overt segregation of schools.”⁵⁴ The CDE also prohibits “limiting any person or group of persons to education of an inferior standard,”⁵⁵ so admissions policies that effectively bar Roma from attending majority schools that receive more resources than schools in Roma areas would be prohibited.⁵⁶ Based on the assessment of the European Roma Rights Center, this provision also bans de facto segregated schools in the Romani ghettos which provide inferior education.⁵⁷

Although the Convention does not use the concept of segregation, unlawful separation is unambiguously prohibited by the expressions “exclusion,” “limitation” and “establishing or maintaining separate educational systems or institutions.” Instances of lawful separation are listed in

⁵² It should be also noted that a Recommendation against Discrimination in Education was also adopted by the General Conference on the same date. While identical to the Convention in content, the Recommendation enables States that are not in a position to ratify the Convention to contribute to the fight against discrimination in education. Hector Gros Espiell, Significance of the Convention against Discrimination in Education (1960) UNESCO, 2005. <http://unesdoc.unesco.org/images/0014/001429/142908m.pdf>

⁵³ UNESCO Convention against Discrimination in Education Art. 1(c) http://www.unesco.org/education/pdf/DISCR1_E.PDF

⁵⁴ Kushen, “Segregated Schools under International Law,” 137.

⁵⁵ CED Art. 1 (b)

⁵⁶ Ibid.

⁵⁷ European Roma Rights Center, *Stigmata*, 17.

Article 2 of the Convention: separation is deemed lawful in three instances:

- A) The establishment of separate educational systems for pupils of the two sexes if
 - a) they offer equivalent access to education
 - b) provide a teaching staff with qualifications of the same standard
 - c) provide school premises and equipment of the same quality
 - d) afford the opportunity to take the same or equivalent courses of study
- B) The establishment of separate educational systems for religious or linguistic reasons in keeping with the wishes of the pupils' parents or legal guardians the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level
- C) The establishment of private educational institutions
 - a) if the object of the institutions is not to secure the exclusion of any group
 - b) the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level

Among the positive obligations in order to eliminate and prevent discrimination the convention requires from the states (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group.⁵⁸

The importance of the Convention, among others, is recognized in the work of the United Nations concerning the right to education. Thus, Article 13 on the right to education of ICESCR is inspired by provisions of the

⁵⁸ Article 3.

Convention. In addition, the Convention is mentioned several times in the General Comment 13 on the Right to Education, elaborated by CESCR in collaboration with UNESCO.⁵⁹

ICERD condemns segregation in general as a distinct harm. Its Article 3 states: "State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." States obligations, elaborated under Article 2 of the ICERD, include the obligation to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization."⁶⁰ The normative content of Article 3 has been further elaborated by the United Nations Committee on the Elimination of Racial Discrimination in its General Comment 19 on "Racial segregation and apartheid (Article 3)" making clear that it covers racial segregation and apartheid as well and setting the obligations on the governments to eradicate the consequences of such practices, irrespective of the fact whether segregation was at the initiative or not of the public authorities.⁶¹

In General Recommendation 29 the Committee pays attention to the phenomenon of segregation and draws attention to the need for states to take the required action to eliminate residential, educational and employment discrimination, as well as to set up mixed communities.⁶² In its General Recommendation No. 27 of August 16, 2000 on Discrimination against Roma, the Committee made, the following recommendation in the education sphere:

18. To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.

In 2002 the European Commission against Racism and Intolerance (ECRI) issued a general policy recommendation in which it suggested that national law should treat segregation as a specific form of discrimina-

⁵⁹ <http://unesdoc.unesco.org/images/0014/001412/141286e.pdf>

⁶⁰ Article 2 (d).

⁶¹ See Office of the High Commissioner for Human Rights, "Racial segregation and apartheid (Art. 3): 18/08/95. CERD General recom. 19. (General Comments)," at: [http://193.194.138.190/tbs/doc.nsf/\(symbol\)/CERD+General+recom.+19.En?OpenDocument](http://193.194.138.190/tbs/doc.nsf/(symbol)/CERD+General+recom.+19.En?OpenDocument)

⁶² General Recommendation No. 29: Art. 1., para. 1 of the Convention (Descent) 01/11/2002. 14–17. www.unhchr.ch

tion.⁶³ Segregation is defined in the document as “the act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification.”⁶⁴

The OSCE Action Plan on Roma declares that “educational policies should aim to integrate Roma and Sinti people into mainstream education by providing full and equal access at all levels, while remaining sensitive to cultural differences.” The document contains a whole range of recommendations to prevent and combat segregation in education, such as ensuring that national legislation includes adequate provisions banning racial segregation and provides effective remedies for violations of such legislation, promoting equal opportunities in the field of education, developing and implementing comprehensive school desegregation programs aiming at: (1) discontinuing the practice of systematically routing Roma children to special schools or classes and (2) transferring Roma children from special schools to mainstream schools; allocating financial resources for the transfer of the Roma children to mainstream education and for the development of school support programs to ease the transition to mainstream education. The Action Plan also includes specific recommendations to facilitate Roma children’s access to mainstream education by (a) Taking measures to eradicate manifestations of prejudice against Roma and Sinti people in schools; (b) Training of educators regarding multicultural education and ways of dealing with ethnically mixed classes; (c) Developing strategies to gain wider community support for the desegregation of schools; (d) Providing support to bridge the gap between Roma and Sinti children and other pupils, including through pre-school programs designed to prepare Roma and Sinti children for primary school; (e) Providing support to increase the number of mediators/trainers and teachers from within the Roma communities.⁶⁵

As a way of definition, segregation is described in the Action Plan as “systematically routing Roma children to special schools or classes.”

D. Segregation as a violation of human dignity

The ECHR (art. 3) the ICCPR (art. 7) and the CRC (art. 37) all contain prohibitions on “inhuman and degrading treatment.” Already in 1973, the

⁶³ ECRI general policy recommendation No. 7 on national legislation to combat racism and racial discrimination, CRI (2002) 41, December 13, 2002. Para 6.

⁶⁴ Para 16 Explanatory Report.

⁶⁵ Chapter V. Improving access to education.

European Court of Human Rights (at that time the Commission) recognized that discrimination in itself can constitute degrading treatment when it is gross. The Commission held that, under certain circumstances, racial discrimination may amount to degrading treatment in violation of Article 3. In its decision in the *East African Asians* case,⁶⁶ the Commission stated that “a special importance should be attached to discrimination based on race,”⁶⁷ and that “discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention.”⁶⁸ Since then, the Court has confirmed this reasoning in other cases as well.⁶⁹ Most recently in the admissibility decision in the *D.H. and Others v. the Czech Republic*⁷⁰ the Court stated that “the Court does not rule out the possibility that a treatment based on prejudice on the part of the majority population towards a national minority may fall under the scope of Article 3. In particular, the feelings of inferiority or humiliation caused by a discriminatory segregation in the area of education could, in exceptional circumstances ... come under the effect of this provision.”⁷¹

⁶⁶ *East African Asians v. UK*, 3 EHRR 76 (1973).

⁶⁷ 3 EHRR 76(1973), para. 207.

⁶⁸ *Ibid.* para. 196.

⁶⁹ See for example *Cyprus v. Turkey*, No. 25781/94. In this case the Court held that Turkish-Cypriot abolition of Greek language secondary school education in northern Cyprus, coupled with abolition of the right to reside in Northern Cyprus for those who chose to be educated in the South, amounted to degrading treatment and violated article 3 of the European Convention. Regarding Roma applicants, see *Moldovan and others v. Romania* (No. 41138/98 and 64320/01, judgment on July 12, 2005) where the European Court ruled “the applicants’ living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by various authorities, constitute an interference with their human dignity which... amounted to ‘degrading treatment’ within the meaning of Article 3 of the Convention.”

⁷⁰ *D.H. and Others v. the Czech Republic*, No. 57325/00.

⁷¹ For further analysis on this issue, please see Anita Danka, “Segregation as a Violation of Human Dignity” in Roma Education Fund, *A School for All*, 1. The case for integrated education, December 2007, 30–34.

III. Actions of International and Regional Human Rights Monitoring Bodies

A. UN human rights monitoring mechanisms and agencies

On numerous occasions, UN treaty bodies have expressed the need to eliminate segregated schools, including those where Roma are over-represented in Eastern Europe. CERD has observed the existence of segregated education of Roma for example in the Czech Republic,⁷² Hungary,⁷³ Slovakia,⁷⁴ the Russian Federation,⁷⁵ Estonia,⁷⁶ Romania,⁷⁷ and Croatia.⁷⁸

In the periodic review procedure the Human Rights Committee expressed concern about segregation for example against Slovakia,⁷⁹ the Czech Republic,⁸⁰ FYROM,⁸¹ and Hungary.⁸² CRC established segregation for example in connection with the UK,⁸³ Hungary,⁸⁴ Ukraine,⁸⁵ Moldova,⁸⁶ Poland,⁸⁷ and FYROM.⁸⁸

⁷² In 2001, the Committee expressed concern about de facto segregation of Roma in housing and education in the Czech Republic, implying that such segregation was a violation of article 3 of the ICERD. The Committee in particular highlighted the use of special schools as a tool of segregation of Roma students. (CERD/C/304/Add.109, May 1, 2001) See also CERD/C/CZE/CO/7 (CERD, 2007).

⁷³ The segregation in Hungary consist of “assigning Roma children to schools and classes for the mentally disabled. The Committee is also concerned about discriminatory practices resulting from the system of separate classes for Roma students and from private schooling arrangements.” See para. 382 from the concluding observation of CERD (Hungary.11.01/2002. A/57/18).

⁷⁴ CERD/C/65/CO/7 (CERD, 2004), CERD/C/SVK/CO/8 (CERD, 2010).

⁷⁵ CERD/C/RUS/CO/19 (CERD, 2008).

⁷⁶ CERD/C/EST/CO/8-9 (CERD, 2010).

⁷⁷ CERD/C/ROU/CO/16-19 (CERD, 2010).

⁷⁸ In 2002, CERD expressed concern to the government of Croatia about segregation of Roma in the education system there, as well as other deficiencies in the education system vis a vis Roma students (CERD/C/60/CO/4 para. 11, 2002). See also CERD/C/HRV/CO/8 (CERD, 2009).

⁷⁹ CCPR/CO/78/SVK (HRC, 2003).

⁸⁰ CCPR/CO/72/CZE (HRC, 2001).

⁸¹ CCPR/C/MKD/CO/2 (HRC, 2008).

⁸² CCPR/CO/74/HUN (HRC, 2005).

⁸³ CRC/C/15/ADD.188 (CRC, 2002).

⁸⁴ CRC/C/HUN/CO/2 (CRC, 2006).

⁸⁵ CRC/C/15/ADD.191 (CRC, 2002).

⁸⁶ CRC/C/15/ADD.192 (CRC, 2002).

⁸⁷ CRC/C/15/ADD.194 (CRC, 2002).

⁸⁸ CRC/C/MKD/CO/2 (CRC, 2010).

CESCR raised concern about segregation for example against Hungary⁸⁹ and Ukraine.⁹⁰

The UN Commission on Human Rights addressed the issue of discrimination against Roma in education, by commissioning a report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Rapporteur visited the Czech Republic, Hungary and Romania in 1999 and reported on discrimination in all spheres of life.⁹¹ The report concluded by calling for an end to school segregation in the Czech Republic and Hungary.

Since its establishment by the Commission on Human Rights in 1998, the mandate of the Special Rapporteur on the Right to Education has sought to identify obstacles to the right to education, and has provided conceptual and practical guidance on steps to be taken to ensure its realization.

UN Independent Expert on Minority Issues reported on segregation in certain public schools in Greece in 2008.⁹²

The Human Rights Council, which was established in 2006 to replace the Human Rights Committee, is responsible for the Universal Periodic Review (UPR), the latest reporting mechanism at the UN within which review process the issue of segregation of Roma children has also been discussed.

UNDP and UNICEF have been trying to rectify the lack of reliable data on the status of Roma by undertaking studies on their living conditions.⁹³ In 2002 UNDP published the first cross-border comparative study of the Roma across five countries—Bulgaria, Romania, Slovakia, Hungary and the Czech Republic. UNDP argued that “disaggregated quantitative data is a precondition for relevant national policies for sustainable inclusion of vulnerable groups, the Roma in particular.”⁹⁴ Most of the activities of these UN agencies were carried out under the Millennium Development Goals. However, starting with 2007, UNICEF became actively involved in the Decade of Roma Inclusion while its country offices, especially the one in Romania, became a strong voice calling for school desegregation.

⁸⁹ E/C.12/HUN/CO/3 (CESCR, 2008).

⁹⁰ E/C.12/UKR/CO/5 (CESCR, 2008).

⁹¹ E/CN.4/2000/16/Add.1.

⁹² <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.11.Add.3.pdf>

⁹³ UNDP, *Roma in Central and Eastern Europe: Avoiding the Dependency Trap*. Bratislava, 2003. <http://vulnerability.undp.sk/>

⁹⁴ UNDP, “Faces of Poverty, Faces of Hope, Vulnerability Profiles for Decade of Roma Inclusion Countries.” Bratislava, 2005, <http://vulnerability.undp.sk/>

The right to education forms an integral part of the mandate of UNESCO, whose mission is to ensure “full and equal opportunities for education for all.” UNESCO’s Constitution establishes the fundamental principle of equality of opportunity for all in education. By the terms of Article I.2(b) of its Constitution, the Organization shall “advance the ideal of equality of educational opportunity without regard to race, sex or any distinctions, economic or social.”

B. Council of Europe mechanisms

In 2000 the Committee of Ministers of the Council of Europe adopted a recommendation on the education of Roma in Europe.⁹⁵ It provides guiding principles of an education policy for Roma children, setting out priorities in terms of structures, curricula and teaching material, recruitment and training of teachers etc. The document acknowledges that the “problems faced by Roma/Gypsies in the field of schooling are largely the result of long-standing educational policies of the past, which led either to assimilation or to segregation of Roma/Gypsy children at school on the grounds that they were ‘socially and culturally handicapped’” and that the disadvantaged position of Roma/Gypsies in the European societies cannot be overcome unless equality of opportunity is guaranteed for Roma/Gypsy children.

The Parliamentary Assembly issued more recommendations regarding Roma. In 2002 in a recommendation dealing with the legal situation of Roma in Europe the Parliamentary Assembly acknowledged that Roma were still subjected to discrimination, marginalization and segregation and called for eradicating all practices of segregated schooling for Roma children, particularly that of routing Roma children to schools or classes for the mentally disabled.⁹⁶

On February 26, 2010 the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe issued a report on “The Situation of Roma in Europe”⁹⁷ in which the Rapporteur expressed concern as to the “continuing existence of Roma-only classes in

⁹⁵ Committee of Ministers Recommendation (2000)4 to member states on the education of Roma/Gypsy children in Europe (adopted by the Committee of Ministers on February 3, 2000 at the 696th meeting of the Ministers’ Deputies).

⁹⁶ Recommendation no. 1557 (2002): “The legal situation of Roma in Europe.”

⁹⁷ The document is available at <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12236.pdf>

the Czech Republic,” and noted the concerns of NGOs that recent Government initiatives had changed nothing.

The European Commission against Racism and Intolerance (ECRI) monitors racism in the Council of Europe participating states also in the context of education.⁹⁸ In addition to that, the human rights situation of Roma is often reviewed among the “vulnerable groups.” It has also happened that the access of the education of Roma children was selected to be mentioned among the “issues of particular concern.”⁹⁹ It carries on its duty by publishing monitoring reports on the members states and issuing General Recommendations.

ECRI’s General Policy Recommendation No. 3 “Combating racism and intolerance against Roma/Gypsies” (adopted by ECRI on March 6,

⁹⁸ See for example ECRI’s reports on Czech Republic in 1997.

⁹⁹ See for example ECRI’s third report on Croatia. CRI (2005) 24 paras 141–143. In its second report ECRI recommended that “the Croatian authorities make special efforts to increase the participation of Roma children at all levels of education.” The measures taken by authorities “are not enough to offset the fact that Roma children are very much behind in terms of equal opportunities in education..... ECRI is particularly concerned by allegations that separate classes solely for Roma children exist alongside classes for non-Roma children in some schools in the Medjimurje region.” Also the second report of ECRI on Lithuania states “attendance at preparatory classes for longer than is strictly necessary must be avoided at all costs. Care should be taken to ensure that only those children who need preparatory classes are put into these classes and that all other children are integrated immediately into mainstream schools” CRI(2003)5, para 58. In its 2000 report on the Czech Republic, ECRI stated that the disadvantages and effective discrimination faced by members of the Roma/Gypsy community in the field of education was of particularly serious concern. It was noted that Roma/Gypsy children were vastly over-represented in special schools and that their channelling to special schools was reported to be often quasi-automatic. ECRI therefore considered that the practice of channelling Roma/Gypsy children into special schools for the mentally-retarded should be fully examined, to ensure that any testing used was fair and that the true abilities of each child were properly evaluated. ECRI also considered that it was fundamental that Roma/Gypsy parents should be made aware of the need for their children to attend regular education. The report on the Czech Republic published in June 2004 also expressed concern about the fact that Roma children continued to be sent to special schools. In connection with the review of Slovakia in 2008 ECRI noted with concern that Roma children in the education system in general continue to face de facto segregation due primarily to the fact that they often live in segregated settlements. “Moreover, it is worrying that schools in Roma settlements are also still generally of a lower quality. ECRI also notes with great concern reports of discriminatory practices as serious as Roma children being placed in separate classes or eating separately.” Available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-IV-2009-020-ENG.pdf>

1998) draws attention to the need to fight against educational segregation. ECRI recommends to the member states “to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education.”

In General Policy Recommendation 7 (adopted by ECRI on December 13, 2002) on national legislation to combat racism and racial discrimination segregation appears among the forms of prohibited behavior. In the explanation to the recommendation the concept of segregation is defined as follows: a form of behavior, with which somebody separates persons from one another without objective or reasonable grounds on the basis of racial or ethnic origin. The recommendation stresses that voluntary separation does not constitute segregation.¹⁰⁰

General Policy Recommendation 10 (adopted by ECRI on December 15, 2006) is dedicated to combating racism and racial discrimination in and through school education. It deplores the existence, sometimes, of de facto segregation in school education.

In 2006 the Commissioner for Human Rights, Alvaro Gil-Robles issued a report on Roma. He noted that segregation in education was a common feature in many Council of Europe member states. In some countries there were segregated schools in segregated settlements, in others special classes for Roma children in ordinary schools or a clear over-representation of Roma children in classes for children with special needs.¹⁰¹

In March 2008 Human Rights Commissioner Thomas Hammarberg drew up a viewpoint dedicated to the topic of early and inclusive education, which he called “the key to the promotion of Roma rights.”¹⁰²

The Advisory Committee on the Framework Convention for the Protection of National Minorities regularly reviews states from the perspective of the educational rights. It expressed concern regarding the over-representation of Roma children in separate classes for example in Croatia¹⁰³ and in special schools designed for the mentally disabled in the Czech Republic.¹⁰⁴ The Advisory Committee stressed that placing children in separate

¹⁰⁰ Explanatory Memorandum to ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. 16.

¹⁰¹ Final Report by Gil-Robles on the Human-Rights Situation of the Roma, Sinti and Travellers in Europe (dated February 15, 2006).

¹⁰² http://www.coe.int/t/commissioner/Viewpoints/080331_en.asp

¹⁰³ See for example the first and second opinions on Croatia (2001) April 6, 2001 (ACFC/OP/i (2001)2, ACFC/INF/OP/II(2004)002).

¹⁰⁴ See the opinions on the Czech Republic of the Advisory Committee published on January 25, 2002 and on October 26, 2005.

special classes or schools should take place only when it is absolutely necessary and always on the basis of consistent, objective and comprehensive tests.

The European Committee of Social Rights' (ECSR) function is to judge the conformity of the national law and practice with the Charter. It holds that "particular attention must be paid to ensure that vulnerable groups benefit from the right to education and have equal access; for example children from minorities," and where necessary equal access to education for these children should be guaranteed through special measures. However special measures for Roma children must not involve the establishment of separate/segregated schooling facilities.¹⁰⁵ The Parliamentary Assembly has issued reports and recommendations on the situation of Roma.

C. OSCE mechanisms

The human rights situation of Roma is regularly discussed at the annual Human Dimension Implementation Meetings and has been the focus of other human dimension events. The Office for Democratic Institutions and Human Rights, OSCE's main human rights watchdog, published in 2008 a Status Report on the situation of Roma within the OSCE region. The High Commissioner on National Minorities issued two reports, in 1993 and in 2000, on the situation of Roma and Sinti within the OSCE region. The OSCE Parliamentary Assembly adopted a resolution on the education of Roma children in 2002.

IV. The European Union

The Treaty on the European Union defines the values that are at the base of its foundations: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."¹⁰⁶ The EU's commitment to the principle of non-discrimination and the right to

¹⁰⁵ The Right to Education under the European Social Charter, Information Document prepared by the Secretariat of the ESC, November 17, 2006. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Theme%20factsheets/FactsheetEducation_en.pdf

¹⁰⁶ Article 6.1 of the Treaty on the European Union.

education were reaffirmed by the proclamation in December 2000 of the Charter of Fundamental Rights of the European Union. The Charter sets out in a single text a whole range of civil, political, economic and social rights to which EU citizens, and all persons resident in the EU, are entitled. Article 14 of the Charter of Fundamental Rights stipulates the right to education¹⁰⁷ and Article 21 of the Charter governs non-discrimination.¹⁰⁸ Following the entry into force of the Lisbon Treaty in 2009 the fundamental rights' charter has the same legal value as the European Union treaties giving its provisions a binding legal force. Its provisions can be used to assist in cases where EU law is at issue.

The adoption of the Race Equality Directive¹⁰⁹ (RED) in 2000 was a step ahead in implementing the principle of equality within the EU member states. The purpose of RED was to set a framework for combating discrimination on the grounds of racial or ethnic origin. The Directive sets out minimum requirements. However, it does not prevent EU member states from introducing national provisions that are more favorable to the protection of equal treatment than those provided for in the Directive. It prohibits both direct¹¹⁰ and indirect discrimination¹¹¹ based on racial or ethnic origin and a range of other acts like harassment, instruction to discriminate or victimization. RED requires member states to abolish laws, regulations and administrative provisions that are contrary to the principle of equal treatment. Member states have to provide for effective, proportionate and dissuasive sanctions in respect to violation of the equality principle and are also encouraged to use positive measures in order to

¹⁰⁷ Article 14 provides that: "1. Everyone has the right to education and to have access to vocational and continuing training 2. This right includes the possibility to receive free compulsory education."

¹⁰⁸ "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited." Article 21.1.

¹⁰⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹¹⁰ Article 2.2(a): "direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin."

¹¹¹ Article 2.2(b): "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

promote equality. The RED provides also for some procedural safeguards that had to be included in the national legislation of the member states like the reversal of burden of proofs and the use of statistics to prove discrimination.

The RED does not specifically address ethnicity-based segregation. Only Bulgaria and Hungary went beyond the standards set by RED and have incorporated definitions of segregation in their national anti-discrimination laws.¹¹² Its provisions were instrumental in raising the issue of Roma school segregation but the results are still to come. As a report of the Directorate General Employment, Social Affairs and Equal Opportunities concludes, RED has the potential to protect against structural discrimination-segregation and institutional discrimination. However, it requires judicial activism to implement the provisions of RED. The report made clear that segregation of Roma children in schools prevalent throughout Europe constitutes direct discrimination and emphasized the need to have a common European definition of Roma as a dual ethnic and racial minority.¹¹³

The policies towards Roma are a joint responsibility of European institutions and member states with the aim to improve the social inclusion of Roma by using all the instruments and policies for which they have the respective competence. The section below presents briefly the most important activities of EU institutions as regards combating school segregation of Roma children.

A. The European Council

The European Parliament, the European Commission and the European Council have repeatedly highlighted the need for urgent measures to combat discrimination against Roma in education and to improve their situation.

In December 1999, at the Tampere Summit, the European Union COCEN group (a special working party established at the Council level) adopted a Recommendation on the Situation of Roma in the candidate countries. This was entitled "Guiding Principles for improving the situation of the Roma based on the recommendations of the Council of Europe's Specialist Group of Roma/Gypsy and on the recommendations of the OSCE High Commissioner on National Minorities." The COCEN

¹¹² Chopin, *Developing Anti-Discrimination Law in Europe*.

¹¹³ Farkas, "Segregation of Roma Children in Education," 46.

recommendation offered guidelines to candidate and other countries as regards the policy issues on Roma.

The Lisbon Summit, in March 2000, set out an ambitious goal of making the Union the most dynamic, competitive, sustainable knowledge-based economy, enjoying full employment and strengthened social and economic cohesion. It agreed a strategic target for 2010. It stressed that these changes would require not only a radical transformation of the European economy, but also a challenging program for the modernization of social welfare and education systems. On February 21, 2007, in its Communication on “A coherent framework of indicators and benchmarks for monitoring progress towards the Lisbon objectives in education and training,”¹¹⁴ the European Commission further pursued the objective set by EU Heads of State and Government in 2002 of “making [European] education and training systems a world quality reference by 2010.” In this Communication, the European Commission proposed a framework of indicators and benchmarks for the follow-up to the Lisbon objectives in the area of education and training. It built upon and otherwise set indicators and benchmarks in the areas of improving equity in education, including for example, literacy in reading, mathematics and science, language skills, ICT skills and civic skills and upper secondary completion rates of young people.

The aim of the Lisbon Summit was not achieved in spite of the European Commission’s attempt to revamp the Lisbon strategy. The accession of the former communist states could have been a factor that hampered the EU efforts to become the leading world economy if one takes into account the weak performances of these countries as regards the indicators and benchmarks set by the Commission. Moreover, with the 2004 and 2007 enlargement the number of Roma inside the EU has increased significantly. Recent estimates are putting the Roma population figure in the European Union at around 10–12 million.¹¹⁵ It would be interesting to see how Roma population performs as regards the indicators and benchmarks of the Lisbon objectives. Reports from the NGOs and international organizations suggest that Roma are facing extreme poverty in some member states and poverty rate among Roma is higher than the national average.¹¹⁶

¹¹⁴ COM (2007) 61 final Fundamental Rights Agency, *The Fundamental Rights Position of Roma and Travellers in the European Union* (factsheet), August 2010.

¹¹⁵ Fundamental Rights Agency, *The Fundamental Rights Position of Roma and Travellers in the European Union* (factsheet), August 2010.

¹¹⁶ UNDP, “Avoiding the Dependency Trap.”

The Communication from the Commission “Europe 2020—A strategy for smart, sustainable and inclusive growth” COM(2010)2020 set ambitious targets that EU have to achieve by 2020. Among them the most relevant are: a) 75 percent of the population aged 20–64 should be employed, b) the share of early school leavers should be under 10 percent and at least 40 percent of the younger generation should have a tertiary degree, and c) 20 million less people should be at risk of poverty. These goals should be translated by the member states into national targets and trajectories.

Since 2007 the European Council has adopted four Conclusions aiming at enhancing European and national policies on Roma: the Presidency Conclusions of the European Council of December 2007 and June 2008; the Council Conclusions on the Inclusion of the Roma of December 2008; and the Council Conclusions on the Inclusion of the Roma of June 2009.

B. The European Parliament

The first time when the European Parliament addressed issues faced by Roma was in 1989 with the adoption of a resolution on illiteracy and education for children whose parents have no fixed abode.¹¹⁷ At the time, it was commonly believed that Roma are predominantly nomads, which in turn also determined the reaction of the Council of the European Union in adopting a resolution on specific school provisions for Roma and Travellers to improve their literacy and access to education.¹¹⁸

In 2002, the European Parliament, in its resolution on the situation as regards fundamental rights in the European Union, also emphasized that education should be free and effective.¹¹⁹ In particular it “calls on the Member States to seek to ensure by all possible means free and effective schooling for all children, including those from very poor families and from certain Roma communities or refugee families, and including children with disabilities who have particular access needs.”

The European Parliament adopted in 2005, 2006, 2008, 2009 and 2010 successive resolutions focusing on the need to undertake effective measures at the European and national levels to solve the problems of marginalization, rejection and racism they suffer, and to improve not only

¹¹⁷ European Parliament (March 17, 1989), *Resolution A2-379/88, Illiteracy and education for children whose parents have no fixed abode*.

¹¹⁸ Council of the European Union (May, 1989), *Resolution 89/C 153/02 on School Provisions for Gypsy and Traveller Children*.

¹¹⁹ (2002) (2002/2013(INI), para 42.

their living standards, but also the effective exercise of their rights. The European Parliament resolutions on the Situation of the Roma in the European Union (April 2005); on the Situation of Roma women in the European Union (June 2006); on a European strategy on the Roma (January 2008); on the Social situation of the Roma and their improved access to the labor market in the EU (March 2009); and on the Second European Roma Summit (March 2010).

On April 28, 2005, in its resolution on the situation of the Roma in the European Union,¹²⁰ the European Parliament referred to the racially segregated schooling systems in place across several EU member states, in which Roma children are taught either in segregated classes with lower standards or in classes for the mentally disabled. It recognized that an improvement in access to education and opportunities for academic achievement for Roma was crucial to the advancement of Romani communities' wider prospects. It specifically called on member states "in which Roma children are segregated into schools for the mentally disabled or placed in separate classrooms from their peers to move forward with desegregation programmes within a predetermined period of time, thus ensuring free access to quality education for Roma children and preventing the rise of anti-Romani sentiment amongst schoolchildren."

European Parliament pressure on the Commission to address issues faced by Roma determined the political will of the political leaders to start the process of adopting a European strategy for Roma. The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Roma MEP Livia Járóka on the EU strategy on Roma inclusion (2010/2276(INI). Based on this report, on March 9, 2011 the EP approved a resolution which sets out the details of the proposed strategy including a number of measures on Roma educational segregation.¹²¹

The EP called on the Commission to set as an objective of the strategy the "abolishing school and classroom segregation, also by creating an inclusive school climate and employing Roma school mediators"(13) and to "gradually introduce compulsory institutional guarantees for the mainstreaming of nondiscrimination and anti-segregation measures, taking into account Directives 2000/43/EC and 2004/113/EC, and also monitor such measures and fight stigmatisation" (17). As point 50 of the resolution

¹²⁰ European Parliament (April 28, 2005) *Resolution on the situation of the Roma in the European Union*, RC-B6-0272/2005.

¹²¹ European Parliament, P7_TA(2011)0092 *resolution of March 9, 2011 on the EU strategy on Roma inclusion*.

indicates, one such guarantee might be the introduction of “new regulations on the allocation of the Structural Funds to set conditionality concerning the elimination of segregation and the assurance of equal access of the Roma to public services; takes the view that equal opportunity and anti-segregation plans should also be prepared at local level, based on measurable indicators and concrete actions.”

The EP resolution makes a clear call for school desegregation and points out to the positive practices of school desegregation developed so far mostly by NGOs. The EP “calls on the Commission to support initiatives which have proved effective in preventing any form of segregation and prioritise inclusive projects that promote educational success and involve the participation of Roma families” (84). This provision opens the way for policy makers to take over the initiatives developed mostly by NGOs and supported by private and public donors.

C. The European Commission

The problems faced by Roma in Central and Eastern Europe came to the attention and scrutiny of the European Union during the enlargement process since protection of minorities was among the political criteria set by the 1993 Copenhagen European Council. In July 1997 the European Commission published Agenda 2000, a document assessing the accession of the candidate countries, which mentioned situation of Roma as an issue of concern. The candidate countries were required to develop national programs or strategies to address specifically the problems faced by Roma. In the regular reports on the progress towards accession of the candidate countries the situation of Roma was assessed in all the candidate countries except Cyprus, Malta, and Estonia. References had been made to the weak educational achievements of Roma and some concerns were expressed as regards discrimination in education, including alleged segregation.

The European Commission joined efforts with other institutions in improving the situation of Roma in different fields, including education. EC was a co-organizer of the 2003 conference “Roma in an Expanding Europe: Challenges for the Future,” held in Budapest, where the idea of a decade for Roma inclusion was launched. In 2004 the Commission published a report on the situation of Roma within the EU with specific mention of the concerns related to segregation.¹²²

¹²² European Commission, “The Situation of Roma in an Enlarged European Union,” Luxembourg, Office for the Publications of the European Communities, 2004.

The European Council of December 2007 requested the Commission to examine the existing Community instruments, policies and progress achieved towards Roma inclusion. On July 2, 2008, the Commission published its response in the form of a comprehensive staff working document.¹²³ The First Summit on Roma inclusion was a follow-up to the Commission's July 2008 report on the EU instruments and policies available to support Roma inclusion, which called for a joint response to tackle Roma exclusion and discrimination in the EU. The Summit was the first occasion when EU institutions, national governments and civil society organizations from around Europe came together at the highest level to discuss the situation of Roma communities in the EU and find ways to improve it. In a preparatory document issued by the EC in advance of the Roma Summit¹²⁴ the EC summarizes what it has done for Roma. According to the document "the EU has for some years taken action in four key areas: Rights, policies, financial support and awareness-raising." As regards financial resources allocated for Roma projects the document advances some impressive amounts spent since 2000 on Roma inclusion: "During the last programming period 2000–2006, some €275 million were devoted to projects specifically targeted at Roma. During the same time approximately €1 billion was spent on measures targeted at vulnerable groups, including the Roma."

The idea of a European platform for Roma inclusion emerged at the first European Roma Summit in Brussels in September 2008. Following this event, EU countries called on the Commission to organize "an exchange of good practice and experience between the Member States in the sphere of inclusion of the Roma, provide analytical support and stimulate cooperation between all parties concerned by Roma issues, including the organizations representing Roma, in the context of an integrated European Platform."¹²⁵

The EC issued a document on "10 Common Basic Principles on Roma Inclusion" aimed at guiding the EU institutions and member states, candidate and potential candidate countries when they design and implement new policies or activities. They represent a legally non-binding declara-

¹²³ COM(2008) 420 Community Instruments and Policies for Roma Inclusion, June 27, 2008.

¹²⁴ MEMO/08/559 Brussels, September 12, 2008 European Roma Summit (Brussels, September 16, 2008) available at <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&eventsId=105&furtherEvents=yes>

¹²⁵ General Affairs Council, December 8, 2008. To date the Platform held five meetings.

tion. The EPSOM Council in its conclusions has endorsed these principles.¹²⁶

The issue of school segregation was debated during the Second Summit on Roma Inclusion held in Cordoba on April 8–9, 2010. One of the conclusions of the roundtable discussing the principle number two of Roma inclusion and addressing specifically the issue of segregation of Roma was that “what we must always reject is segregation and all measures conducive to it.” The participants also underlined that “targeting, i.e., explicit measures, are necessary for overcoming segregation, which requires, for instance, that the Operative Programmes of the Structural Funds make explicit reference to the Roma.”¹²⁷

The EC Communication COM(2010)133 on the social and economic integration of the Roma in Europe identifies as a specific challenge ahead “the development of explicit desegregation policies, notably in education and in housing and supported by the Structural Funds.”

The Commission Staff Working Document, “Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion—Progress Report 2008–2010” mentions segregation as an issue in several member states: “Apart from these common challenges, Bulgaria, Hungary, Italy and Romania stressed that segregation represents a serious problem which leads to the exclusion of Roma from education and other basic services.”¹²⁸

D. Fundamental Rights Agency

The European Monitoring Centre on Racism and Xenophobia (EUMC), which is now the EU Agency for Fundamental Rights (FRA), has reported

¹²⁶ The 10 Common Basic Principles on Roma Inclusion are: 1. Constructive, pragmatic and non-discriminatory policies; 2. Explicit but not exclusive targeting; 3. Inter-cultural approach; 4. Aiming for the mainstream; 5. Awareness of the gender dimension; 6. Transfer of evidence-based policies; 7. Use of Community instruments; 8. Involvement of regional and local authorities; 9. Involvement of civil society; and 10. Active participation of the Roma. <http://ec.europa.eu/social/BlobServlet?docId=5689&langId=en>

¹²⁷ Report on the II European Roma Summit, Spanish Presidency of the European Union 2010, available at <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&eventsId=234&furtherEvents=yes>

¹²⁸ Commission Staff Working Document, “Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion—Progress Report 2008–2010,” 7. available at: <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&eventsId=234&furtherEvents=yes>

specifically on the situation of the Roma in public education.¹²⁹ It described the situation of Roma as remaining unsatisfactory. It emphasized that “access to education and the educational attainment of Roma and Travellers is affected by direct and systemic discrimination and exclusion in education and influenced by their overall conditions of life, which are invariably characterized by high unemployment, substandard housing and poor access to health services creating a vicious circle of poverty, exclusion and marginalization that affects their ability to participate in and benefit from education.”

According to the Report evidence suggested that segregation did occur to a greater or lesser degree either as a result of non-implementation of national anti-segregation policies by local authorities and schools, or as an indirect effect of educational policies and practices limiting equal access to education of Roma and Traveller pupils. It emphasized that “Member States must ... ensure that the legal measures expressly prohibiting any form of direct or indirect segregation into different schools or classes with effective, proportionate and dissuasive sanctions are in place and implemented by the relevant authorities.” It asserted that “Member States should deploy specific desegregation measures where segregation of Roma and Traveller children exists ensuring that desegregation measures are properly implemented at the local level.” Moreover, “Member States must ensure that schools with Roma and Traveller pupils receive the appropriate, if necessary additional, funding that allows them to provide education of equal quality as all other public schools.”

However the report indicates some deficiencies regarding how FRA conceptualizes school segregation. In the report one form of segregation is classified as “intra-class segregation” according to which “Roma pupils can be segregated within a classroom by sitting them in a different part of the room away from the others.”¹³⁰ Although the placement of Roma children in the back row of a classroom might lead to discrimination, the authors believe, that it does not constitute segregation as the physical separation element of segregation impeding the socialization process of the Roma pupils does not materialise.¹³¹ At the same time, classifying the

¹²⁹ European Monitoring Centre on Racism and Xenophobia, *Roma and Travellers in Public Education: An overview of the situation in the EU Member States*, May 2006.

¹³⁰ *Ibid.*, 46.

¹³¹ Separation is the common denominator of different definitions or standards provided by national or international law. The UNESCO Convention Against Discrimination in Education (1960), ECRI general policy recommendation No. 7 on national legislation to combat racism and racial discrimination, The US Supreme Court in the case *Brown*

placement of Roma students in the back row of the classroom as segregation might lead to misunderstandings about the extent and consequences of school segregation on the Roma school achievements.

Research in the field¹³² documented that Roma children learning in separated schools or classes enjoy lower quality education, with less qualified and higher turnover of teachers, lack of infrastructure and education materials, sometimes lower quality or special curricula, etc. If Roma children are placed in the same classroom as non-Roma, it is difficult to substantiate that their socialization with their peers is impeded. In addition, the conclusions of the above-mentioned research that separate education of the Roma children lead to their lower quality education as a result of less qualified teachers, lack of adequate infrastructure and educational materials etc. cannot be drawn either.

EUMC/FRA already used a similar approach in its 2005 annual report, where it classified the practice of organising different groups in a school class according to their performance as segregation.¹³³ This conceptualization, however, is not unique to FRA, as UNICEF has also classified the placement into specific areas of the classroom as segregation.¹³⁴

vs Board of Education, as well as the definitions of segregation provided for by the national authorities in Bulgaria, Hungary and Romania mentions separation as the central element of segregation. See also chapter 3, 109–22.

¹³² ERRC, Stigmata, available at: <http://www.errc.org/cikk.php?cikk=1892>; Gábor Kézdi, Éva Surányi, “A Successful School Integration Program, Budapest: Roma Education Fund;” or Mihai Surdu “The Quality of Education in Romanian Schoolswith High Percentages of Romani Pupils,” *Roma Rights* 3–4/2002, available at: <http://www.errc.org/cikk.php?cikk=1628>

¹³³ According to the report: “Different types of segregation can be discerned: (1) Intra-school segregation, which is caused by organising special minority classes or remedial classes in the same school. (2) Intra-class segregation, which is created by organising different level groups in a school class. (3) Inter-school segregation between regular schools, which can be caused by regional and housing segregation of different ethnic groups. (4) Inter-school segregation that can be based also on a separate system of regular and special (remedial) schools. (5) Inter-school segregation that can be caused by the organisation of private, foundation or faith schools in addition to the state school system.” Fortunately the mistake was not repeated in the FRA subsequent work on the subject. European Monitoring Centre on Racism and Xenophobia. 2006. Annual Report 2005. Part II, 69. Available online at: http://fra.europa.eu/fraWebsite/research/publications/annual_report_on_fundamental_rights/ar05_part2_en.htm

¹³⁴ “They may be segregated in classrooms by being put into specific areas of the class, or into entirely separate classes.” UNICEF, 2011, The Right of Roma Children to Education: Position Paper, Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States.

V. The World Bank

The World Bank (WB) became involved in Roma-related issues by publishing reports on Roma questions from the perspective of economic and social development¹³⁵ and supporting research. The objective of the WB's involvement in this area was to increase the quality and availability of basic information on the welfare of Roma in Central and Eastern Europe and the Balkans as information on their living conditions and welfare status was fragmented.

Besides sponsoring or conducting research, the WB supported policy development related to Roma at the country level, and supported the governmental structures in charge of the Roma-related issues through grants for capacity building. In addition to these grants, the WB offered loans to the governments in the region to support policies and programs aiming at improving the welfare of the most vulnerable communities, including Roma. The WB offered also direct support to Roma NGOs through grants between two and five thousand U.S. dollars. The WB is one of the initiator and supporter of the *Decade of Roma Inclusion*, 2005–2015—with one priority area being education—as well as the initiator of and contributor to the Roma Education Fund to provide support in improving the educational achievements of the Roma community.

Some of the loans offered by the WB were directed towards investments in education, like in Romania and Bulgaria. The WB leadership had repeatedly called on the participating governments in the Decade of Roma Inclusion to bring an end to Roma school segregation. In addition to its adopted position for desegregation, the WB conducted a research showing the economic benefits of Roma inclusion, estimating that countries of Central and Eastern Europe might have a 4–6 percent increase in GDP if they invest in the inclusion of Roma.¹³⁶

VI. The Role of the Donors

Donors played an important role in shaping the agenda of Roma and pro-Roma NGOs. A side effect of the donors' policies is that these organizations were more accountable to their donors than to those they claim to

¹³⁵ Ringold, *Roma and the Transition in Central and Eastern Europe*.

¹³⁶ The World Bank, *Roma Inclusion: An Economic Opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy Note*, September 2010.

represent. Some donors helped or initiated the establishment of formal or informal groups to make the “voice of the Roma” heard and to place Roma issues on the agenda of the governments and international organizations. The European Roma Rights Center, the European Roma Information Office, the European Roma Policy Coalition, the International Roma Women’s Network, the European Roma Grassroots Organization, the European Roma and Travellers Forum, the delegations of Young Roma Leaders within the Decade of Roma Inclusion are the most prominent such cases.

As a critical observer described, the weak points of this approach to Roma empowerment was that “when governments feel the need to get a non-governmental or community view on policy, they know what views they wish to hear.” This practice is not specific only for the governments: “Governments and international organizations like the Council of Europe, European Union, etc., were the conveners and sponsors of meetings and hence decided who came to the table. They were the buyers and it was a buyer’s market.”¹³⁷

The donors often fail to involve Roma in designing their funding strategies. Few Roma make it into the selection committees deciding on funding proposals. Most of the donors do not even publicize their funding strategies. For example, the participation of Roma in the selection of PHARE projects was dependent on the will of the European Commission Delegations in the candidate countries. In those countries where the Roma activists had close cooperation with the EC Delegations some Roma were selected to participate in the project selection committees. However, these cases were rather an exception. These practices have a negative impact on policy making towards Roma. Thus, no surprising that school desegregation did not make it on the agenda of many donors, being often seen as too radical or a cause of conflict between activists and state authorities.

The European Commission’s approach to Roma inclusion is explicit but not exclusive: it does not separate Roma-focused interventions from broader policy initiatives. This approach does not allow for analyzing the funds allocated for Roma programs and policies and hinders the evaluation process of these initiatives. According to the European Commission estimates “Under PHARE, more than €100 million has been spent since 1998, targeting primarily education, infrastructure and other fundamental challenges for Roma communities. Substantial support continued for both Bulgaria and Romania until 2006, with more than €20 million being allo-

¹³⁷ Nirenberg, “Romani Political Mobilization,” 102.

cated to minority issues for Bulgaria (2004–2005) and €35 million for Romania.”¹³⁸ In another document, the European Commission advances other estimates: “During the last programming period 2000–2006, some €275 million were devoted to projects specifically targeted at Roma. During the same time approximately €1 billion was spent on measures targeted at vulnerable groups, including the Roma.”¹³⁹ From these conflicting figures one cannot determine how much was spent on Roma school desegregation. It would be interesting to conduct independent evaluations of EU funded projects on education for Roma and to assess how many of these projects lead to integrated school environments or maintained the segregation of Roma in education. For example, data from the evaluation of the PHARE program “Access to education for disadvantaged groups with focus on Roma” reveal that although desegregation was one of the priorities of the program, at the time of the evaluation the number of schools that participated in the program and were still segregated or organized separate classes for Roma was very high. (See the policy review section on Romania). This raises questions on the impact of these programs and the change they lead to as regards the situation of Roma.

Experts identified several structural failures of the PHARE programs: “limited institutional commitment, a restricted approach to multi-faceted structural problems, short-term duration of projects, and hurried planning undermining effectiveness. In principle, the EU’s Roma PHARE program was a welcome offer of assistance, however, evidence to date indicates that none of the serious problems afflicting most Roma communities are nearing a solution.”¹⁴⁰

A more serious question for debate is whether EU funds could be used to maintain segregation of Roma. EU legislation makes clear that the allocation of funds should be made in accordance with the *acquis communautaire*, including Race Equality Directive. Under the RED, segregation constitutes direct discrimination and is illegal. The problem of the EU funds allocated to projects that maintain school segregation of Roma is a real one as such projects were implemented in Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and other countries.

¹³⁸ COM(2008) 420 Community Instruments and Policies for Roma Inclusion, June 27, 2008, 49.

¹³⁹ MEMO/08/559 Brussels, September 12, 2008 European Roma Summit (Brussels, September 16, 2008) available at <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&eventsId=105&furtherEvents=yes>

¹⁴⁰ Guy and Kovats, *EU-funded Roma Programs*, 15.

The dilemma on segregated or integrated schools constituted a subject for debates inside other donor organizations as well. The Open Society Institute, the largest private donor on Roma issues that spent over \$100 million since its establishment, had different programs and initiatives that supported education projects targeting Roma. The Roma Participation Program, lead by one of the most active advocates of Roma schools desegregation insisted that the ultimate aim of any educational project for Roma is the creation of a desegregated school environment. It was necessary for a roundtable attended by George Soros and OSI top leadership to make this point clear and to impose school desegregation as rule across OSI programs and initiatives dealing with education for Roma.¹⁴¹ After 2005, this portfolio was transferred to the Roma Education Fund.

The Roma Education Fund (REF) was established in 2005 in the framework of the Decade of Roma Inclusion as a follow up of the conference “Roma in an Expanding Europe: Challenges for the Future” held in Budapest in 2003. Its mission and ultimate goal is to close the gap in educational outcomes between Roma and non-Roma by supporting policies and programs which ensure quality education for Roma, including the desegregation of education systems. It attracts funds from public and private donors, including governments, the Open Society Institute and the World Bank being among the contributors. Currently, the REF is the major funder of Roma school desegregation initiatives in spite of its limited funding availabilities as compared to other donors and of the fact that REF focuses on other educational priorities as well.¹⁴² In addition, the REF has

¹⁴¹ The meeting took place in Budapest on April 4, 2003. Rob Kushen presented a paper detailing the issue of segregation under international law. See Robert Kushen, *Segregated Schools under International Law*, in Ed Rekos and Maxine Sleeper, *Separate and Unequal: Combating Discrimination against Roma in Education*, New York and Budapest: Public Interest Law Initiative, 2004.

¹⁴² REF has produced several publications and research in support of the governments efforts to close the gap in educational outcomes between Roma and non-Roma and in support of desegregation process. The most important studies are: Gábor Kertesi, Gábor Kézdi, *Expected Long-Term Budgetary Benefits to Roma Education in Hungary*, Budapest: Roma Education Fund, 2006; Roma Education Fund and European Roma Rights Center, *Persistent Segregation of Roma in the Czech Education System*, Budapest, 2008; Eben Friedman, Elena Gallová Kriglerová, Martina Kubánová, Martin Slosiarik, *Systemic Overrepresentation of Roma in Special Education in Slovakia*, Budapest: Roma Education Fund, 2009; Eben Friedman, Elena Gallová Kriglerová, Mária Herczog, Laura Surdu, *Assessing conditional cash transfers as a tool for reducing the gap in educational outcomes between Roma and non-Roma*, Budapest: Roma Education Fund, 2009; Gábor Kézdi, Éva Surányi, *A Successful Integration Program: An Evaluation of*

its own structural limitations to address segregation as some of its donors specifically mark their funds for some geographical area or specific activities.

VII. Conclusion

The international organizations, such as the Council of Europe and OSCE, started to pay close attention to the particular human rights situation of Roma in Europe as early as in 1990. At the beginning the focus was racism and intolerance within the realm of security and recently more attention is paid also to socio-economic issues, among them education. The European Union started to focus on the Roma issues at around 1997 and kept increasing its attention leading up to the 2004 enlargement and continuingly thereafter.¹⁴³ At the beginning of the 21st century both UN and CoE human rights monitoring bodies felt the need to address the educational segregation of Roma in separate general recommendations.¹⁴⁴ The latest international documents call for desegregation of schools as a priority and include a wide range of special measures to create equality of opportunity for Roma. The adopted numerous international texts dealing with the education of Roma are evidence that this issue is of great concern to the international organizations.¹⁴⁵

Despite the numerous international instruments which recognize the right to education on an equal footing and ban racial discrimination in all spheres of public life and the various standard-setting guidelines addressing the specific situation of Roma discrimination against Roma in the field of education is still present in many countries of Europe, as evidenced by the findings of the various human rights monitoring mechanisms. School segregation represents a structural factor that affects access of Roma to quality education and is one of the factors explaining their limited education achievements and their entrapment in dependency.

the Hungarian National Government's School Integration Program 2005–2007, Budapest: Roma Education Fund, 2009.

¹⁴³ H. Ram, Melanie, *Anti-discrimination Policy and the Roma: Assessing the Impact of EU Enlargement*, 494.

¹⁴⁴ CERD General recommendation 27 (2000), ECRI general policy recommendation no. 7 on national legislation no. 7 on national legislation national legislation to combat racism and racial discrimination, CRI (2002) 41, December 13, 2002.

¹⁴⁵ Council of Europe DG IV, "Political and Legislative Framework for the Education of Roma Children; Reference Texts and Support Systems," 16.

The lack of an internationally agreed definition of segregation might hinder the efficiency of legal actions and policy measures aimed to combat it. Agreement on such a definition would most likely represent a step ahead in combating school segregation.

By far the most influential external factor on the human and minority rights situation, especially Roma rights, in Central and Eastern Europe was the European Union enlargement process. The strategy of the Roma and human rights activists towards international organizations evolved from “naming and shaming” to “setting the policy agenda.” With the EU accession of the countries under review in this book, the Roma and human rights activists will have to re-think their strategies. At the same time the European Union must ensure that all the member states—old and new alike—fulfill their pledges to end segregation.

The European Union and its structures offer a comprehensive framework for adopting school desegregation policies. Some EU institutions, like the European Parliament was constantly pressuring the Commission and the member states to adopt comprehensive policies aiming at social inclusion of Roma, including school desegregation policies. As the speech of the Commission President Baroso at the First Roma Summit indicated, the responsibility for Roma policies is a joint one between the EU institutions and the member states. After the adoption of the resolution by the European Parliament and the determination of the Hungarian EU Presidency, the Commission adopted the “EU Framework for National Roma Integration Strategies up to 2020” on April 5, 2011. However, whether this will translate into resolute state actions to eliminate the persistent marginalization and entrenched discrimination of Roma and lead to a systemic change remains to be seen.

Donors played a crucial role in supporting desegregation activities. Currently, the only donor that openly supports desegregation programs and policies is the Roma Education Fund. A more active role of the other donors, especially of the EU as well as a significant increase of allocations from the national budgets towards inclusive education are needed to desegregate the educational systems in CEE.

Using the “carrot” of money as well as the “stick” by forcing states to change their policies and fulfill their human rights commitments are, however, doomed to failure if social attitudes towards the Roma do not improve radically.

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CHAPTER THREE

Judicial Policy Making: The Role of the Courts in Promoting School Desegregation

IULIUS ROSTAS

I

Historically, courts played an important role in shaping public policies. Some authors define this process as “judicial policy making” consisting of “a choice among alternative courses of action, which choice binds those subject to the policymaker’s authority.”¹

In democratic states, the courts make or shape policies through the interpretation of the constitutional provisions and the extra-constitutional interpretation of sub-constitutional laws and institutions and practices. Thus, judicial review—“the power of a court to void actions of the legislative and executive branches of government”²—is part of the democratic process through the separation of power doctrine meant to ensure a system of check and balances between the government branches. The judicial policy making varies across democratic countries as democratic arrangements vary.

The aim of the chapter is to identify patterns as regards legal arguments and reactions of courts to the issue of school segregation across the region. The chapter will concentrate on the legal instruments available to Roma and human rights activists in the region by analyzing the legal cases brought by them in front of courts or specialized bodies at national level, as well as before the European Court of Human Rights (ECtHR). How did they frame the issue of segregation? What types of arguments did these lawyers make? How did courts define the issue? How did courts decisions influence policy process? Although the first ECtHR judgment on Roma school segregation has been delivered relatively recently, it is interesting to assess the impact the segregation cases had on the larger Roma community and in society.

¹ Segal, *The Supreme Court in the American Legal System*, 4.

² Ibid., 12.

The chapter is divided in three parts. The first part analyzes the decisions of the ECtHR in the three segregation cases brought up by the human rights activists while the second part focuses on cases of segregation at national levels, specifically in Bulgaria, Hungary and Romania. The assessment of courts decisions is made along several characteristics of segregations: as a form of discrimination, as a physical separation, as material inferior conditions, as lower quality education and as sub-financing. The chapter ends with the conclusions around common features in defining segregation in education from a legal perspective in the region and identifying weaknesses and strong points in the legal discourse as regards segregation.

The European Court of Human Rights

The European Court of Human Rights based in Strasbourg is an international court set up in 1959. It rules on individual or State applications alleging violations of rights set out in the European Convention on Human Rights ratified to date by 47 member states of the Council of Europe. Since 1998, it has sat as a full-time court and individuals can apply to it directly. However, the ECtHR is not a fourth instance court, meaning that it cannot be considered as a court of appeal for decisions at national level.

To date the ECtHR had to decide on three cases challenging segregation practices within the educational systems in Central and Eastern Europe. The first case was lodged with the ECtHR on April 18, 2000 by 18 applicants of Roma origin from the Czech Republic.³ They complained that between 1996 and 1999 they were placed in special schools for children with learning difficulties, thus following a limited curriculum compared to the ordinary school curriculum. The decision of their placement in special schools was based on the results of a test administered by the head teacher. After exhausting domestic remedies, the 18 Roma filed an application with the European Court in Strasbourg alleging violations of Articles 3 (prohibition against degrading treatment), 6 (right to a fair trial), and Article 2 of Protocol No. 1 (right to education) taken together with Article 14 (prohibition of discrimination). According to James Goldston, the lawyer representing them, the applicants had suffered severe educational, psychological and emotional harm: “(i) they had been sub-

³ *D.H. and Others v. the Czech Republic*, judgment of February 7, 2006 and *D.H. and Others v. the Czech Republic*, judgment of November 13, 2007 (Grand Chamber).

jected to a curriculum far inferior to that in basic schools; (ii) they had been effectively denied the opportunity of ever returning to basic school; (iii) they had been prohibited by law and practice from entrance to non-vocational secondary educational institutions, with attendant damage to their opportunities to secure adequate employment; (iv) they had been stigmatized as “stupid” or “retarded” with effects that will brand them for life, including diminished self-esteem and feelings of humiliation, alienation and lack of self-worth; and (v) they had been forced to study in racially segregated classrooms and hence denied the benefits of a multicultural educational environment.”⁴

The second school segregation case before the ECtHR was launched in 2005 against Greece.⁵ The case concerned 11 primary schooling age children of Roma origin who could not be registered in the school year 2004–2005. They were subsequently placed subsequently for the academic year 2005–2006 in special classes, in an annex to the main primary school building. The non-Roma parents protested against the admission of Roma children to primary school and blockaded the school, demanding that the Roma children be transferred to another building. Police intervened to prevent abuses committed by protesters against Roma children. Under these circumstances, Roma parents signed an agreement to place their children in an annex to the school, in prefabricated classrooms. The walls of the building hosting the Roma classes were later marked with racial slurs and the building allegedly was set on fire by non-Roma protesters. The applicants, relying on Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol No. 1 (right to education) and Article 13 (right to an effective remedy), complained that their children had suffered discrimination in the enjoyment of their right to education on account of their Roma origin.

The third case regarding school segregation in front of the ECtHR was launched in 2003 against Croatia.⁶ The case was about 15 Roma children from three villages in the northern region of Medimurje who were placed throughout most of all their primary education in Roma-only classes, as well as for some periods in mixed classes, in a mainstream school. The curriculum in the Roma-only classes was reduced with approximately 30 percent as compared to the official curricula followed by mixed classes,

⁴ Goldston, *Ending Racial Segregation in Schools*.

⁵ *Sampanis and Others v. Greece*, judgment of 5 June 2008.

⁶ *Orsus and Others v. Croatia*, judgment of July 17, 2008 and *Orsus and Others v. Croatia*, judgment of March 16, 2010 (Grand Chamber).

Roma children receiving lower quality education. The official reason for setting up Roma-only classes was the weak proficiency of Roma children in the Croatian language. Statistics indicated that Roma in the Međimurje region had a high chance to be assigned to Roma-only classes and that they had a lower chance to complete their education. The applicants alleged that they were subject to racial discrimination due to their placement in separate classes from their peers, a situation that deprived them of their rights to education in a multicultural environment. By separating them from other students, they were subjected to a degrading treatment in violation of Article 3 of the Convention. According to Anita Danka, the staff attorney that was responsible for the representation of the referenced case on behalf of the ERRC, the Roma children had to endure “severe educational, psychological and emotional harm, which materialized in: a) stigmatization, feelings of alienation and lack of self-worth (stigmatizing them as different, less bright, intellectually inferior, they have to be separated from “normal” children so as to not exert a bad influence on them); b) denial of the benefits of a multicultural educational environment; and c) being subjected to a wider practice resulting in two separate school systems for members of different racial groups.”⁷

The ECtHR found violations of nondiscrimination clause (article 14) in connection to the right to education (Article 2 of the Protocol no 1 to the Convention) in all three cases. It is important though to mention that in *D.H.* and *Orsus* the applicants appealed to the ECtHR Grand Chamber the decisions rendered by the chambers, as the latter did not find a violation of the Convention in either case.⁸ Thus, in less than five years the ECtHR issued five decisions on cases related to alleged school segregation of Roma.

The first question that one might have reading these decisions is about the nature of the decided circumstances: are these decisions about school segregation? While the facts and the allegations made by the applicants leave no doubt that they are talking about segregation of Roma within the educational system, the ECtHR decisions do not interpret the facts as racial segregation. In *DH II* the Grand Chamber mentions only once the word segregation with indirect references to the situation by “shar[ing] the disquiet of the other Council of Europe institutions who have expressed

⁷ Danka, *The European Court of Human Rights*.

⁸ The *D.H.* and *Orsus* cases will be mentioned as *DH I* and *DH II*, respectively, *Orsus I* and *Orsus II* thus numbering the decisions, the first being that of the Chamber and the second that of the Grand Chamber.

concerns about the more basic curriculum followed in these schools and, in particular, the segregation the system causes.”⁹ In no other parts of the five decisions does the ECtHR use the word “segregation” when assessing the submissions of the parties. One reason for this failure to mention it might be that “segregation is not nearly as widely-used a legal concept in Europe as in the United States, and at least some of the judges on the ECtHR may have been concerned to avoid appearing to following an approach considered to be American.”¹⁰ One might also view the reluctance of the ECtHR to use the concept of segregation as a sign of conservatism. The conservatism of the ECtHR in addressing the issue of segregation stands out in comparison with the reports and documents of other international institutions cited in the decisions as these institutions clearly name the practice of separating the Roma children in education as “racial segregation.”

In all these cases, the ECtHR assessed the submissions by the parties as indirect discrimination. Following the same line of reasoning one might ask: does segregation equate to indirect discrimination? While segregation is a form of discrimination, it is not always an indirect discrimination. Often Roma children are assigned to Roma-only classes due to their ethnicity solely. The usual formal justification for this placement practices from the school authorities is the protection of children’s identity or the maintenance of Roma children together to get along and feel better in school. In many such cases, it is clear that the criterion for separating the pupils is their ethnicity and not a neutral criterion that has as an effect the separation of children. Taking into account the definitions of direct and indirect discrimination from the EU Race Equality Directive (RED),¹¹ when the difference in treatment is based on ethnicity, this constitutes direct discrimination. Reducing segregation to indirect discrimination does not cover the complexity of the phenomenon in the field.

What is the difference between arguing segregation cases as direct or indirect discrimination? From the legal point of view, the difference is significant and might impede the efforts of those pursuing litigation as a desegregation strategy at national level in light of the ECtHR decisions.

⁹ *DH II*, para 198.

¹⁰ Interview (phone) with James Goldston, February 7, 2011. James Goldston was the legal counsel for the plaintiffs and the person who, as the Legal Director of the European Roma Rights Center at that time, built the *DH* case.

¹¹ Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Official Journal L 180, 19/07/2000 P. 0022–0026.

The difference comes from the tests that should be applied by a court once a case of segregation is argued as direct or indirect discrimination. More specifically, when racial segregation in education is acknowledged as direct discrimination, the protection against such acts is significantly higher as it leaves no room for justification.¹² Once a case of racial segregation is argued as an indirect discrimination the court should apply the proportionality test, i.e., assess whether the aim is legitimate, and if yes, whether there is a balance between this aim and the means employed to pursue it.

From this perspective, some legal experts are of the opinion that the segregation cases before the ECtHR were argued inappropriately as indirect discrimination.¹³ Lilla Farkas, a member of the European Network of Independent Experts in the non-discrimination field, argues that “direct discrimination is the most appropriate way of understanding school segregation.”¹⁴ This argument is based on the fact the “the definition of discrimination under RED covers the multifaceted identity of Roma ... the whole range of social attributes constitutive of their identity, including culture, language, area of residence, social class and historical exclusion.”¹⁵ Another legal expert in the field of non-discrimination, Dagmar Schiek, argues that without taking into account all social attributes of Roma identity the aim of realizing equality as a human right is unfulfilable.¹⁶ Moreover, as Farkas shows in her report, the jurisdiction of both international and domestic courts indicate that there are a number of cases that consider language, cultural traditions, way of life and religion as attributes of the Romani identity.¹⁷ From these arguments it seems that it is not only possible to equate segregation to direct discrimination but this also increases the protection against segregation.

¹² Under the European legal standards, specifically—Council Directive 2000/43/EC of June 29, 2000 (Race Equality Directive)—direct discrimination can be justified only in cases requiring genuine professional qualification or positive measures.

¹³ It is important to note that at the time when the application in *DH* was lodged with the ECtHR (April 2000) the RED did not exist and no distinction between direct and indirect discrimination was made at the time in the jurisprudence of the ECtHR. Thus, the counsels of the applicants were left only with the possibility to argue segregation based on the effects on the right to education. However, for the other two cases the RED was in force when the complaints were addressed to the ECtHR.

¹⁴ Farkas, *The Scene After Battle*, 52.

¹⁵ Farkas, *Segregation of Romani Children in Education*, report prepared for the European Commission, July 2007 available at http://www.migpolgroup.com/publications_detail.php?id=158

¹⁶ Schiek, “A New Framework on Equal Treatment,” 304.

¹⁷ Farkas, *Segregation*, 18–26.

What form of discrimination is racial segregation then? Segregation is not addressed specifically by the RED or by the European Convention on Human Rights. As indicated above, segregation could be argued both as direct and indirect discrimination. As direct discrimination, under the European standards (RED) segregation cannot be justified.¹⁸ Nevertheless, international human rights law, e.g., the United Nations Convention on the Rights of the Child, the Council of Europe Framework Convention for the Protection of National Minorities, International Covenant on Economic, Social and Cultural Rights, makes justifiable racial segregation in education under clearly defined circumstances. Under the provisions of these documents racial segregation is justifiable if “it serves the best interest of the child, is based on the free and informed consent of the parents, aims at preserving the religious, linguistic and cultural traditions and if it provides the same standard of education.”¹⁹ In *DH I* the ECtHR Chamber did not balance the best interest of the children against the parental consent as it accepted parental consent as a justification for segregating children without considering if the consent was “informed.” Thus, it placed the responsibility on Romani parents as “it was the parents’ responsibility, as part of their natural duty to ensure that their children receive an education.”²⁰

Could segregation be also a form of indirect discrimination under the same European standards? Practice shows that school districting might result in school segregation of Roma. In this case, what leads to racial segregation is an apparent neutral criterion—the way school districting is designed. In such cases, school segregation could be a form of indirect discrimination and the court has to look into the justification of the aim and proportionality of measures employed. Nevertheless, the jurisprudence of the European Court of Justice indicates that even if an apparently neutral criterion which, by nature or by the force of law, affects only a specific group can still be considered direct discrimination.²¹

This apparent confusion derives from the lack of a legal definition of racial segregation. Under the anti-discrimination legislation, racial segregation should be defined in what it consists of and mentioned as a special form of discrimination as recommended by the European Commission and

¹⁸ Direct discrimination could be justified under the RED in two situations: cases requiring genuine professional qualifications and affirmative action towards specific disadvantaged groups. It is evident that segregation does not fall within these two categories.

¹⁹ Farkas, *Segregation*, 27.

²⁰ *DH vs. Czech Republic*, para. 51.

²¹ *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Case C-267/06 [2008]. I am grateful to Lilla Farkas for this suggestion.

Racism and Intolerance (ECRI).²² Currently no international organization has provided an acceptable definition of racial segregation nor there is any guidance to governments on how to define this special form of discrimination.²³

Segregation consists of a physical separation. If this separation takes place in the field of education its effects have a higher negative impact. The ECtHR supports such a statement if one analyses the *DH II* and *Sampanis* judgments. It treats the right to education as one of paramount importance for the development of the child and that inclusion in a local school is a prerequisite for inclusion in the larger local community. Although the ECtHR stated in *Orsus I* judgment that “the right to education is principally concerned with primary and secondary schooling and for the right to be effective the education provided must be adequate and appropriate” as well as that “the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed” it failed to elaborate further on the substantive part of the right to education, and thus, to bring more clarity about the definition of education and the corresponding right.

Irrespective of the approaches to and definitions of education, there are several common characteristics. Education is about the transfer of knowledge, skills and values, aiming at preparing the individuals for social life, including competition in the labor market. One important objective of education as a process is the socialization of pupils through direct interaction. Separating Roma children from their non-Roma peers deprives them of their full enjoyment of the right to education since they cannot socialize with their peers of another ethnicity and are limited in acquiring knowledge, skills and values that are essential for their inclusion into the local community. Segregation inflicts a sense of humiliation and inferiority on those in minority and leads to the isolation of the segregated pupils, depriving them of certain skills, behavior, information and contacts that contribute to their social and economic success.

²² ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination Adopted on December 13, 2002, point 6.

²³ ECRI attempted to provide a definition of racial segregation as “a form of behavior, with which somebody separates persons from one another without objective or reasonable grounds on the basis of racial or ethnic origin.” Explanatory Memorandum to ECRI General Policy Recommendation No on national legislation to combat racism and racial discrimination, 16. The definition remained marginal as no other institution accepted it.

The authorities often forget the socializing objective of the education process when they decide on pupils' school placement. The ECtHR also falls short in assessing the full enjoyment of the right to education of the Roma children in all three cases as it chose not to take into account the reports on the effects of segregation on Roma children. Thus, the ECtHR in its rulings on *DH*, *Sampanis* and *Orsus* does not properly address the limitation on the full enjoyment of the right to education as it assesses separation as a difference in treatment that could be justified. From this point of view, the segregation of Roma in education should be argued under the current legislative standards as direct discrimination.

A striking aspect of the analysis of the five decisions of the ECtHR in the three alleged cases of school segregation is the inconsistency in the application of tests. If one takes into account that these decisions were issues by the ECtHR in a bit more than four years (between February 7, 2006 and March 16, 2010) and the way they were decided—6 votes to one as no violation in the Chamber decision on *DH I* and reversed by 13 votes to four by the Grand Chamber, unanimous decision in *Sampanis*, and unanimous decision no violation by the Chamber and reversed by 9 votes to 8 by the Grand Chamber in *Orsus*—the issue of consistency in the application of standards is highly questionable.

The ECtHR Chamber failed to take into account evidence presented by the plaintiffs both in *DH I* and *Orsus I*. In *DH I* the ECtHR did not consider at all that some of the applicants were misplaced in schools for mentally disabled and were later moved back into ordinary schools. In *Orsus I*, the ECtHR failed to take into consideration the evidence that supported the claim that Roma children followed a reduced curriculum based on a research conducted by the Ombudsman.

As regards testing in education, the ECtHR did not consider the tests to be culturally sensitive or could not substantiate the government justifications for separation. In *DH I*, the ECtHR was not suspicious about the results of the tests in spite of the fact that later it was proved that some children have been misdiagnosed. In *Orsus I*, the ECtHR did not take into account that the tests used by the authorities could not objectively substantiate the language deficiency of the applicants. What indicates even better the inconsistency of ECtHR application of standards is that a few months before deciding *Orsus I*, in *Sampanis* the ECtHR Chamber found that separation of Roma children in Roma only classes due to the same reason—inadequate command of official language—that has not been substantiated by the lack of “suitable tests” was found as a violation of the right to education!

The ECtHR in all three cases mentioned that Roma is a vulnerable community that needs special protection and the authorities should take into account the special needs of Roma as a disadvantaged class. The ECtHR did not explore in depth the nature of Romani identity as a multi-faceted issue, limiting itself to this general presentation.²⁴ The result of this approach is that when analyzing the school involvement of the Romani parents the ECtHR presented Romani parents as incapable of deciding for their children.²⁵ Roberta Medda-Windischer,²⁶ a Senior Researcher with the European Academy of Bolzano, finds the reasoning of the ECtHR as stereotyping Roma and, thus, justifying some positions according to which paternalistic measures as regards Roma are justifiable. In his dissenting opinion to the Grand Chamber decision, Judge Borrego Borrego, criticizing the judgment of his colleagues, underlines that such an assessment on the Romani parents is “unduly harsh, superfluous and, above all, unwarranted” and constitutes “an example of the sad human tradition of fighting racism through racism.”²⁷

In both *DH I* and *Orsus I* the ECtHR Chamber did not apply the proportionality, assessing whether there was a reasonable relationship of proportionality between means employed and the aim sought to be realized by the separation of applicants. They took for granted the arguments of the Governments that the reasons for separating the children were mental disability and, respectively, weak proficiency of Croatian language. The ECtHR avoided exploring the substance of the right to education, this being perceived as pedagogical aspects of education that are not related to the right itself.

In *DH I* and *Orsus I*, the ECtHR Chamber proved a limited understanding of the international and European standards as regards discrimination as the main element in the way the cases were argued as indirect discrimination was the effect of a measure or policy and not the intent. Intent was not claimed or disputed by the applicants. By addressing the

²⁴ For an excellent analysis of the nature of Roma identity and their role in discrimination see Farkas, *Segregation*, especially chapter 2.1 “Racial or ethnic origin under the RED and the multi-faceted nature of Romani identity: who are covered?” 16–23.

²⁵ *DH vs. Czech Republic* (Grand Chamber) para 203: “In the circumstances of the present case, the Court is not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent.”

²⁶ Medda-Windischer, *Dismantling Segregating*, 93–94.

²⁷ *DH vs. Czech Republic* (Grand Chamber) Opinion of the Judge Borrego Borrego, paras 13–14.

intentionality in discrimination cases the Chamber applied standards that are applicable in criminal law and not in civil cases as “culpability in civil cases operates along different considerations from the liability under criminal law.”²⁸ By applying criminal law standards to discrimination cases, the ECtHR Chamber made it almost impossible to prove discrimination and to win such cases under the Convention.

The ECtHR was not consistent in the aspects it examined while deciding the three cases. In *DH II* the Grand Chamber refused to examine the individual cases. In *Sampanis* the ECtHR Chamber look at placement in separate classes, other factors that could influence the placement process, the transfer and monitoring procedures and physical conditions of the educational environment of Roma children. In deciding *Orsus II* the Grand Chamber considered the initial placement in separate classes, the curriculum, the transfer and monitoring procedures, schools attendance and drop out rate, and the involvement of parents. From these judgments, one cannot deduct the investigative standards to look into while assessing a situation as segregation or not.

The most controversial aspect of the Grand Chamber decision in *DH II* is the approach to systemic discrimination of Roma in society. According to the ECtHR Grand Chamber “the vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.”²⁹ Thus, Roma are benefiting a special protection as an ethnic minority and it is not clear if other ethnic or racial groups will enjoy similar protection. It seems that the case is unique also that no comparator for the less favorable treatment is identified by the court. With this logic, one needs to prove discrimination in a different way than other applicants. “It is enough to prove that the applicant is Romani, that in relation to her substantive right such a public/state duty exists and that it is not complied with”³⁰ argues Lilla Farkas.

On the other hand, the Grand Chamber did not examine the individual cases as the applicants belonged to the Roma minority, a group that was discriminated against by the application of the law and it considered automatically that all members of the Roma community suffered the same discriminatory treatment.³¹ This argument, as one of the lawyers

²⁸ Farkas, *The Scene*, 53.

²⁹ *DH vs. Czech Republic* (Grand Chamber), para 181.

³⁰ Farkas, *The Scene*, 56.

³¹ *DH vs. Czech Republic* (Grand Chamber), para 209.

involved in *DH* indicates, left open the question if a mentally disabled Roma child placed in a special school would have won the case, even though his placement in the special school would have not been discriminatory.³² As Roberta Medda-Windischer underlined, by asserting that the whole Romani community was prejudiced by the application of the Czech law at the time, the ECtHR transformed *DH II* in a case of structural and systematic discrimination.³³ James Goldston pointed out that one principal goal of the *DH* case was “to tackle the systemic practice of placing Roma children in schools for those labeled mentally disabled in the Czech Republic and thus depriving them of equal opportunities and their right to education.”³⁴ The same could be said about *Sampanis*. Even if the rulings in *DH II* and *Sampanis* could be seen as opening the way for combating structural discrimination, the ECtHR failed to provide remedies accordingly, remedies that will address the collective victims of indirect discrimination based on the argument that if the violation of a right is collective the remedies should also be collective. In *Orsus II* the ECtHR took a different approach and analyzed the cases individually.

What is to note is that segregation is a controversial issue inside the ECtHR. This can be seen from the fact that the Grand Chamber decided two out of three cases. In the end neither decision clarified the position of the ECtHR on segregation nor did the Court clarify what exactly constitutes racial segregation. Even the understanding and consequences of this phenomenon seems to be misunderstood by the ECtHR as the compensations awarded by the victims are not at the level to have a deterrent effect on the perpetrators.³⁵

What is the impact of these decisions? How much desegregation have they produced? These questions come naturally to whomever is interested in school segregation. The answers are complex as time is relatively short since the rulings and the assessment of impact requires a longer period. Were they followed and applied by courts at national level? Have they led to an increase of school segregation cases brought before the courts? Another factor to consider is that the impact is directly linked with the ECtHR details on systemic discrimination and general measures in light of

³² Strupek, *Before and After*, 43.

³³ Medda-Windischer, *Dismantling*, 41.

³⁴ Interview with James Goldston, February 7, 2011.

³⁵ The compensation awarded by the ECtHR to each plaintiff varied: 4000 Euro in *DH*, 4500 in *Orsus*, and 8,000 Euro in *Sampanis*.

the predominant problems with the implementation of the general measures by the states.

The ECtHR in all three cases failed to require the authorities to desegregate the schools, not even the schools concerned. This is a major difference between these cases and *Brown*, as one of the lawyers that pleaded in *Brown* indicated when he compared *Brown* with the three segregation cases decided by ECtHR.³⁶ In *Brown II* the U.S. Supreme Court issues an injunction to the authorities to “desegregate with all deliberate speed.” Greenberg shows also another failure of the European system: the lack of deterrent effect of the sanction imposed by courts in segregation cases:

“Importantly, when courts assess damages in a case like this, the person (or entity) who pays may not be the one who made the initial decision to segregate the schools. If the official or officials who made the initial decision to segregate are not required to pay the damages, which are instead paid by the municipality or successor officials, the legal consequences of the decision to segregate are unlikely to serve as an effective deterrent to those tasked with making similar choices in the future. Even if the courts later decide that such officials violated the law, *someone else* will pay the price.”³⁷

In these cases ECtHR brought its jurisprudence in line with the EU anti-discrimination law. For doing this, ECtHR made references to the reports and standards of other international institutions, especially European institutions and those that are under the same roof with it. This approach was criticized as the ECtHR went beyond the facts of a specific case to identify societal patterns.

In *DHI* the ECtHR Chamber decided that “statistics are not by themselves sufficient to disclose a practice which could be classified as discriminatory.” The Grand Chamber in its ruling adopted a different view on the role of the statistics in discrimination cases. When plaintiffs are able to present reliable statistics, even not official, which lead to a *prima facie* indication that a rule or a practice is discriminatory, it is for the respondent to demonstrate that the rule or practice was based on justifiable nondiscriminatory criteria. Statistics must show a dominant trend for being reliable or at least partly reliable. Thus, the reversal of burden of proof makes it accessible for the victims of discrimination to fight in court for compensation and redress.

³⁶ Jack Greenberg, “Report on Roma Education Today: from Slavery to Segregation and Beyond,” *Columbia Law Review* vol. 110, 943.

³⁷ Greenberg, “Report,” 943.

While analyzing the parental consent, ECtHR imposed a high standard for protection against discrimination developed in its jurisprudence: no waiver to be discriminated against. Thus, the contradictions between the European standards as regards non-discrimination and international human rights law are conflicting not only about the justifiable character of racial segregation but also about the role of the parents or legal guardian. The ECtHR Grand Chamber in both its decisions on alleged Roma school segregation cases found that the right to non-discrimination cannot be waived. However, the International Covenant on Economic, Social and Cultural Rights (Art. 13 para. 3)³⁸ and the United Nations Convention on the Right of the Child (Art 14 para 2)³⁹ impose a duty on the states to respect the right of the parents to educate their child as they deemed appropriate with respect for the best interest of the child.

The ECtHR judgments set some concrete policy standards as regards the right to education and non-discrimination:

- Separation might be justified if done by law thus, avoiding arbitrariness (inconsistent application of the rule) or targeting of a single group. Separation is legitimate and proportional only if temporary and it is ensured that once the children attain an adequate level of proficiency they are automatically transferred into mixed classes. If done for language purposes the language command has to be determined through standardized tests designed for this purpose. The program to improve the language skills should include a time frame, should be based on an individual development plan and a progress monitoring system should be in place. The homogeneity of the class does not constitute a reason to maintain separate classes.
- For the protection of Roma as a special disadvantaged community, in order to reduce the drop out rate and promote education of Roma, the governments ought to apply positive measures and to assist Roma pupils with any difficulties they might encounter in following the school

³⁸ ICESCR Art 13 para 3. "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."

³⁹ 2. CRC Art 14 para 2 "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

curriculum. To address problems faced by Roma in education the active and structured involvement of relevant social services is necessary.

- As regards the children with special educational needs, the governments have to have in place a system for assessing the capacities of children with learning difficulties, to monitor their progress, especially in the case of children from ethnic minorities, to provide for possible placement in special classes on the basis of non-discriminatory criteria. Even if the parents do not get involved in the education of their children or do not object to their class assignment, these should not serve as a basis for their segregation.

From a legal point of view, *DH* was a breakthrough case as it defines legal standards on the prohibition against discrimination. James Goldston summarized them: “the *D.H.* judgment clarifies for the first time that the Article 14 prohibition against discrimination applies not only to specific acts, but to systemic practices; that racial segregation which disadvantages members of a particular racial or ethnic group face amounts to discrimination in breach of the Convention; that Article 14 bars the “indirect discrimination” of a general policy or measure which, though couched in neutral terms, generates disproportionately prejudicial effects; that the intent to discriminate is not an essential element of a claim of discrimination; that while they are not required, statistics can be used to establish discrimination; and that, where an applicant alleging indirect discrimination establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State to show that the difference in treatment is not discriminatory.”⁴⁰

There are also less positive aspects as regards the approach to segregation of the ECtHR. The impact of the ECtHR rulings on the Romani movement was insignificant. Had the ECtHR acknowledged directly that education-based segregation on racial grounds is a systemic problem, the case would have opened the opportunities to ask for moral compensation for past segregation to all those that have suffered. An example of moral compensation based on past suffering and not on legal arguments is the compensation to the victims of deportations in labor and extermination camps during the the Second World War. This would offer a boost to the whole Romani movement, a cause to rally around for a general interest of the community.

By failing to acknowledge the three cases as even racial segregation the ECtHR made a disservice to the advocacy groups for Roma inclusion

⁴⁰ Goldston, *Ending Racial Segregation*, 4.

in Europe. Taking into account that it took more than seven and a half years to decide the *DH* case, the efficiency of ECtHR produced disillusionment among human rights activists. As for the victims, most of the time, the judgments came too late and offered little satisfaction. As Robert Kushen put it, “for individual applicants, victories can be, at best, symbolic: they receive some money (usually a small amount) in non-pecuniary damages, but that is all. The money in no way compensates them for the actual damage they have suffered. In the case of *D.H. and Others v The Czech Republic*, for example, each applicant received €4,000. How does this compare to being falsely labeled as having a disability and relegated to substandard schools and to jobs that don’t require anything more than the most rudimentary education?”⁴¹

As of the writing of this book, the policy changes determined by the ECtHR decisions in the three countries concerned are limited. In the Czech Republic, following the ECtHR decision, a coalition of Czech and international NGOs, Together to School, was set up in order to advocate for systemic change as regards equal opportunities to Roma in education. According to Jan Stejskal, who leads the Together to School coalition, the Government amended the education law already in 2005 in the sense that the name of the special schools was changed but the situation remained the same. The Government adopted a National Action Plan on Inclusive Education but no change has taken place on the ground. No special school was closed down following *DH* decision.⁴² Between 2007 and March 2011 ERRC and a number of national and international NGOs⁴³ submitted five communications to the Committee of Ministers⁴⁴ regarding the failure of the Czech Government to fully implement the *DH* ruling.⁴⁵

In Greece, the segregation of Roma children in the educational system persists according to reports on the ground.⁴⁶ The government failed to act

⁴¹ Kushen, *Implementing Judgments*, 3.

⁴² Interview with Jan Stejskal, Prague, October 1, 2010.

⁴³ The communications are available at <http://www.errc.org/cikk.php?cikk=3559>

⁴⁴ The Committee of Ministers of the Council of Europe is responsible, among others, for supervising the execution of judgments of the ECtHR. This work is carried out mainly at four regular meetings every year. The Committee of Ministers’ essential function is to ensure that member states comply with the judgments of the European Court of Human Rights.

⁴⁵ For details about the challenges to fully implement *DH* decision see Lydia Gall and Robert Kushen, “What Happened to the Promise of *DH*?,” *Roma Rights* no. 1/2010.

⁴⁶ For details regarding the situation in Greece see Panayote Dimitras, *Greece’s Non-Implementation of International (Quasi-)Judicial Decisions on Roma issues*, Roma Rights No 1/2010 available at: <http://www.errc.org/cikk.php?page=4&cikk=3613>

in accordance with the ECtHR ruling in *Sampanis* to bring an end to segregation in spite of the recommendations by ECRI, UN Independent Expert on Minority Issues and the efforts of national and international NGOs. Due to the authorities failure to act in 2009 the Greek Helsinki Monitor filed another two applications with ECtHR alleging school segregation of Roma.⁴⁷ The same limited changes occurred in Croatia following the decision in *Orsus* case, as the Government provided the possibility to further education for the pupils dropping out from the compulsory education even before final decision in *Orsus*.

When assessing the impact one has to consider also the positions of those who build the cases. In two of the three cases, the lawyers were Americans and West Europeans connected to an international human rights NGO—ERRC. The advantage was that they had the knowledge, the commitment and the experience in human rights litigation. The disadvantage was that they were perceived by almost all those actors that were expected to advance desegregation further on as “foreigners” to the issue, that they did not know the region,⁴⁸ or that the organization involved in the case was unaccountable to the needs of the victims.⁴⁹ As an example, after more than ten years since the first case was built, the number of lawyers and quality of legal expertise in these countries on this particular issue is almost the same. Legal professionals and mainstream human rights groups did not perceive school segregation of Roma a priority in the human rights field. Rather it was left as an issue to deal with to the Roma organizations which often do not approach segregation from a human rights perspective but as a social inclusion/poverty issue.

Comparing the ECtHR rulings in Roma school segregation cases with *Brown vs. Board of Education of Topeka County* becomes a reflex when

⁴⁷ Panayote Dimitras, “Greece’s Non-Implementation,” *Roma Rights* no. 1/2010.

⁴⁸ Barbora Bukovska describes the risk with strategic litigation: “reducing the victims to passive objects” or “creating and maintaining a power imbalance between human rights advocates, in this case lawyers and their clients.” “Litigation can have a great impact on a particular issue but without extensive support for victims, it can be completely disruptive for the individual. It can very easily happen that the victims are, in a sense, manipulated and abused twice when the focus of the action is not the victim but an ideology alien to them.” Barbora Bukovska, “*Perpetrating Good: The Unintended consequences of International Human Rights Advocacy*,” PILI Papers no. 3, New York and Budapest, Public Interest Law Institute, 2008.

⁴⁹ Wiktor Osiatynski points out to “the need for agencies capable of making use of rights,” defined as legal empowerment, as a possible way to reduce exclusion of vulnerable groups and avoid a top down approach to human rights issues. Osiatynski, *Human Rights*, 100.

one attempts to look at the impact of the Roma school segregation cases. In spite of the common knowledge that *Brown* led to the appearance and development of the Civil Rights Movement in the U.S., recent evidence indicates that this is rather an oversimplification of what really happened following the decision of the US Supreme Court. In fact, Michael Klarman shows not only that *Brown* did not mobilize African-American communities but led to an increase in violence against African-American communities and to a radicalization of the political life.⁵⁰ Many observers questioned the way segregation was confronted and the benefits for the wider community. From another point of view, *Brown* led to the appearance of a political cleavage that had influence since then on the American political life. No major political struggle could ignore the issue brought up by *Brown*: racial equality.

It is evident that the three cases of school segregation decided by the ECtHR did not produce such a backlash. The general public has limited knowledge, if at all, about the segregation of Roma in educational systems, associating the term segregation with practices from the U.S. or South Africa. Even in the countries where these cases originated, they did not generate a debate, except among a few legal professionals and human rights activists. There was no effective communication strategy around the cases and almost no mobilization of Roma communities and organizations. In fact, the initiator of two cases, the European Roma Rights Center does not have among its aims the mobilization of Roma communities. ERRC has been built following the National Association for the Advancement of Colored People (NAACP) model in the U.S. Thus, ERRC aims “to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.” ERRC was the leader organization in putting Roma on the agenda of international organizations and even on national governments. But it never intended to mobilize Roma communities.

On the other hand, one has to acknowledge that the ECtHR rulings were not explicit about school segregation of Roma, its causes and its

⁵⁰ “*Brown* was less directly responsible than is commonly supposed for the direct-action protests of the 1960s and more responsible for ensuring that those demonstrations were brutally suppressed by southern law enforcement officers. That violence, when communicated through television to national audiences, transformed racial opinion in the North, leading to the enactment of landmark civil rights legislation.” Klarman, *From Jim Crow to Civil Rights*, 364.

impact on the society. It is also true that unlike African-Americans, the institutions developed by Roma are not mass organizations and lack the capacity to mobilize Roma.⁵¹

For assessing the impact of the school segregation cases one has also to look into the impact on litigation at national level. Have these cases been used in domestic courts in building legal argumentations and cited as directly binding standards? Did they determine an increase in the number of complaints in domestic courts? What was the reaction of the courts and other judicial bodies to the segregation cases? Did they refer to the judgments of the ECtHR in deciding the alleged school segregation cases? The next sections try to look into these questions.

II

Bulgaria

Bulgaria has adopted an anti-discrimination law that goes beyond the standards set by the RED.⁵² The law includes a definition of racial segregation as “the issuing of an act, the performing of an action or omission, which leads to compulsory separation, differentiation or dissociation of persons based on their race, ethnicity or skin color.” The potential victims could choose the procedure before the Commission for Protection against Discrimination (CPD) or before a court of law. As one of the lawyers that argued cases of discrimination using both procedures argued “it is an easier procedure before the CPD to find a violation of the non-discrimination clause than in front of a court. However, institu-

⁵¹ A number of scholars have investigated the mobilization of Roma at national and international level recently. See for example Jud Nirenberg, *Romani Political Mobilization from the First International Romani Union Congress to the European Roma, Sinti and Travellers Forum* or Iulius Rostas, “The Romani Movement in Romania: Institutionalization and (De)mobilization,” in Nando Sigona and Nidhi Trehan, eds., *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization, and the Neoliberal Order*, London: Palgrave Macmillan, 2009. Peter Vermeersch offers a clear picture on the mobilization of Roma in the Czech Republic, Hungary and Slovakia in Peter Vermeersch, *The Romani Movement: Minority Politics & Ethnic Mobilization in Central and Eastern Europe*, New York: Berghahn Books, 2006.

⁵² The Protection against Discrimination Act entered into force on January 1, 2004, after having been adopted by the Parliament on 16 September 2003 and promulgated in the *State Gazette* on September 30, 2003.

tions rather obey the decisions of the courts than to the decisions of the equality body.”⁵³

There was no increase on the number of cases confronting racial segregation in education following the decisions of the ECtHR in *DH*, *Sampanis* and *Orsus* as reported by the lawyer that brought before the courts or national equality body almost all school segregation cases in Bulgaria. Daniela Mihailova provides two reasons that might explain this situation: on the one hand it is the disinterest of the Bulgarian public with public interest cases and on the other hand, there is limited knowledge as regards the decision of the ECtHR among both the public and legal professionals.

The judges were reluctant to take into account the standards set by the ECtHR in the school segregation cases rulings even when few legal professionals made references to these decisions and attached the ECtHR decision to the complaint to the court. Following the adoption of the anti-discrimination legislation few Bulgarian NGOs with support from the European Roma Rights Center challenged the racial segregation practices of Roma children within the educational system. The claims before the courts regarded the following practices: “denial of enrolment to Romani children by municipal schools; segregation and inferior education provided for the Romani children in the all-Romani schools (“Gypsy schools”); segregation of the Romani students in “all-Romani classes” within the municipal schools following alleged threats by ethnic Bulgarian parents to move their children to other schools; classroom racism; overrepresentation of Romani children in the special schools for children with light developmental disabilities—many Romani children are sent to those schools because their parents are misinformed and the schools are advertised as social institutions for poor children.”⁵⁴

As of the date of the interview there were a total of 14 cases alleging racial segregation of Roma within the educational system in Bulgaria. “The only successful case to date as regards Roma school segregation was examined and decided by a judge who received training on international anti-discrimination standards”⁵⁵ points out Daniela Mihailova. This situa-

⁵³ Interview (phone) with Daniela Mihailova, January 25, 2011. Mihailova is a lawyer with the Equal Opportunity Foundation in Sofia. Previously she was the Legal Director of the Romani Baht Foundation. She initiated a number of cases in Bulgaria on discrimination against Roma.

⁵⁴ Daniela Mihailova, *Legal Practice under the Bulgarian Protection against Discrimination Act*, Roma Rights no. 1/2005.

⁵⁵ Interview with Daniela Mihailova, January 25, 2011.

tion indicates the systemic problem of legal education quality, especially training for judges, as regards anti-discrimination standards.

Following the finding of the court of a violation of anti-segregation clause in 2006, the case was referred for mediation to the CPD. In January 2008, in two subsequent decisions the CPD mediated a desegregation plan agreed by the initiator of the case and the defenders and ordered the implementation of the desegregation plan.⁵⁶ However, the local authorities, the Ministry of Education, and the Regional Inspectorate as defendants failed to implement the decision to date.⁵⁷

What is the explanation for the very limited number of cases where courts found violations of non-segregation clause in a country where segregation of Roma in schools is pervasive (see the data from the policy review section and from the first chapter of this book)? The definition of racial segregation seems to be an important impediment. The courts usually interpret it as requiring the intent or actions that lead to segregation. Forced or compulsory segregation seems to be a formulation that suggests that some forms of segregation are acceptable. Thus, the courts apply the intentionality standard from criminal procedure to establish the liability in a civil case, a procedural mistake that makes it extremely difficult if not impossible for the victims of discrimination to win their cases. In addition, the test makes it impossible to apply the reversal of burden of proof, a necessary procedure aimed at reducing the burden of those that were classified according to race and/or ethnic lines.

The inefficiency of the Bulgarian judiciary to promote desegregation is compounded by the lack of political will to combat discrimination. In 2009, there was an attempt to limit the powers of the Commission for Protection against Discrimination, the number of members and their mandate. To date (March 28, 2011), the CPD is in a legal limbo as the mandate of its members expired as of March 2010 and the National Assembly failed to appoint new members.

⁵⁶ For details please see Decision No. 12 dated 18.01.2008 on case file no. 120/2006 of CPD First Specialized Permanent Panel and Decision No. 19 dated 25.01.2008 on case file No. 120/2006 of CPD First Specialized Permanent Panel in Commission For Protection Against Discrimination, Compendium Case Law Of The Commission For Protection Against Discrimination, Sofia, 2008, 101–105.

⁵⁷ Interview with Daniela Mihailova, January 25, 2011.

Hungary

Hungary has adopted an anti-discrimination law as of 2003 that goes beyond the standards set by the RED.⁵⁸ Article 10, para 2 of the law defines segregation: “Unlawful segregation is a conduct that separates individuals or groups of individuals from others on the basis of their characteristics as defined in Article 8 without a reasonable explanation resulting from objective consideration.”⁵⁹

Debates around school segregation of Roma children date back to the 1980s as the practice of channeling Roma children into special schools for mentally disabled was seen as discriminatory. However, the issue was clearly defined as segregation only in 1997 by the Parliamentary Commissioner for National and Ethnic Minority Rights in its 1997 annual report, estimating that half of the children in these institutions were Roma.⁶⁰ As reported by the Roma Press Center and the ERRC, on September 6, 1999, in a joint press conference with the Parliamentary Commissioner, the Hungarian Minister of Education, Zoltán Pokorni, publicly acknowledged segregation of Roma within the educational system in Hungary.⁶¹

⁵⁸ The Act on Equal Treatment and the Protection of Equal Opportunities, Act no. 125 of 2003, adopted by the Parliament on December 22, 2003.

⁵⁹ The grounds defined in Article 8 are: sex, racial origin, color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, the part-time nature or definite term of the employment relationship or other relationship related to employment, the membership of an organization representing employees' interests; and other status, attribute or characteristic.

⁶⁰ “The form of segregation of Roma pupils within the educational system by channeling them to special schools or classes organized for mildly mentally disabled children is a way also practiced in other countries of Central Europe. Estimates are that half the children studying in such institutions are of Roma origin, in other words a level of 6–7 times that of non-Roma children in the whole of the public educational system. Despite the fact that rules of redirecting to special institutions have been several times tightened, these schools continue to operate as mass “depots” of Roma pupils. The enormous number of Roma pupils in these types of institution which offer no opportunity for further studies or jobs is not a sign of the intellectual inaptitude of Roma pupils, but rather of discrimination employed against them and teachers' failure in ordinary institutions of public education.” Annual Report of the Parliamentary Commissioner For National and Ethnic Minority Rights 1997, Budapest, 1998, available at: <http://www.kisebbségiombudsman.hu/hir-239-annual-report-of-the-parliamentary.html>

⁶¹ See the report from ERRC <http://www.errc.org/cikk.php?cikk=1153>

Chance for Children Foundation (CFCF), a Budapest based NGO, and its legal consultant Lilla Farkas assumed the role of challenging the status quo as regards segregation. The strategy developed by the CFCF legal team was focused on bringing legal complaints in front of the courts mostly due to “the visibility of proceedings, efficiency and the primacy of the CFCF role as the ‘mover and shaker’ of the status quo.”⁶² In addition, there were reservations regarding the equality body’s knowledge both in anti-discrimination and pedagogical terms and the means available to enforce its decision. The procedural tool used was *actio popularis* or collective complaint provided by the law. The advantage in using the *actio popularis* is that the victims are not exposed publicly and that “it focuses on patterns, trends and scenarios of discrimination” being a more effective tool for “tackling institutional, structural or de facto segregation.”⁶³

Two cases on discrimination in education were decided by courts in Hungary before CFCF actions. The first lawsuit dates back in 1997 and was initiated by 17 Roma students, assisted by the Roma Civil Rights Foundation, against Ferenc Pethe School in Tiszavasvári. The plaintiffs sued the school because it organized separate graduation ceremony for Roma and non-Roma at the end of the academic year. The plaintiffs based their legal arguments on anti-discriminatory provisions of the laws on education and on ethnic and minority rights as well as on Civil Code. The findings of the Parliamentary Commissioner for Ethnic and Minority Rights investigations supported their allegations of discrimination: the school had a history of assigning Roma to separate classes located in an annex 230 meters from the main building, Roma children could not access the cafeteria or gymnasium in the main building, and separate records were maintained for Romani classes, marked “C” or “Cigány”—“Gypsy” in Hungarian. The first instance court found a violation of their right not to be discriminated against and obliged the local government to pay damages to each child to the amount of 100,000 HUF (\$500). This decision was subsequently affirmed by the appellate court as well as by the Supreme Court.⁶⁴

The second case—the Tiszatarján case⁶⁵—concerns the assignment of nine children, most of them Roma in a segregated class and teaching them based on a special (inferior) curriculum from 1994 to 1999, in the ab-

⁶² Interview with Lilla Farkas, Budapest, February 9, 2011.

⁶³ Farkas, *Limited Enforcement Possibilities*, 181–196.

⁶⁴ The text of the legal complaint is available at <http://www.errc.org/cikk.php?cikk=1807>.

⁶⁵ Additional info about the case is available at <http://www.errc.org/cikk.php?cikk=2024>

sence of any prior certification declaring them mentally deficient and unable to attend regular classes. The assignment to the special class disregarded their age, pedagogical and psychological assessment, and ultimately the prescribed legal procedure. All of the children affected, most of them Romani, came from families with low income and social standing in the community and have accordingly had difficulties in asserting their rights and interests in the education context. In its judgment of October 7, 2004, the Budapest Metropolitan City Court of Appeals concluded that the segregation of the plaintiffs by the school and the local authorities was in breach of the Hungarian Public Education Act as regards unequal treatment and inferior quality education they received. The court ordered the respondents to pay damages in the total amount of HUF 3,650,000 (approximately €14,600), with accrued interest, to the nine families.

These two cases were not alleging ethnicity based segregation but they were important in fighting segregationist practices within the Hungarian education system. The most important consequence of the Tiszavasvári case was that following the lawsuit, the Ombudsman for Ethnic and Minority Rights conducted a survey which revealed systemic patterns of segregation of Romani children in schools in Hungary. The decisions in both cases were used by the ERRC legal team to argue *Orsus* in front of the ECtHR.

The Miskolc case was the first CFCF case challenging Roma school segregation in Hungary. It was initiated in 2005 in the city of Miskolc with approximately 17 percent Roma population living in four settlements. The city reorganized its schools by merging the so-called Gypsy schools with the majority Hungarian schools in an attempt to reform public services. The reorganization of schools was mostly on paper as the Roma children did not have the possibility to enroll in the schools that provided better quality education. The first instance court dismissed the CFCF complaint ruling that the Miskolc authorities did not violate the equal treatment law as CFCF did not prove the intent of the authorities to segregate Roma. The appellate court reversed the decision of the first instance court.⁶⁶ The Parliamentary Commissioner for National and Ethnic Minority Rights submitted *amicus curiae* during the appeal procedure underlining that intent was not required to prove discrimination, the need for informed consent as well as the possible justification of segregation under the international standards. The appellate court did not order Mis-

⁶⁶ Borsod-Abaúj-Zemplén County Court, Judgment No. 13.P.21.660/2005/16; and Debrecen Appeals Court, Judgment No. 13.P.21.660/2005.

kolc authorities to desegregate the schools. This aspect led to a delay in actual desegregation of the schools in Miskolc and additional efforts on the side of CFCF.

As the case concerned only three out of the twelve schools in Miskolc and due to the failure of the local authorities to terminate school segregation in spite of the decision of the appellate court, CFCF engaged in negotiations with the local authorities, took them in front of the Equal Treatment Authority and it sought another judgment from a court to bring an end to this illegal practice. In 2010, the case was closed as the local council adopted a resolution to close down the remaining segregated school.

Negotiations with local authorities proved to be in some instances a strategy to pursue desegregation as it shows CFCF experience with the cases in Nyíregyháza and Győr following the claims of segregation before courts. The Nyíregyháza local council decided to close down the segregated schools and bus the Roma children to other six mainstream schools in the area. The Győr local council decided, due to the location of the school building, to transform the segregated school in a magnet school by reaching a balance in the proportion of Roma and non-Roma pupils. The local government conditioned the establishment of new classes in the first grade for the new academic year on: “reaching a certain number of children, drawing back the middle class children into the school and achieving a balance between the two groups of pupils including by bussing some of the Roma children to other schools.”⁶⁷ The desegregation strategy included the elaboration of a yearly reviewed pedagogical plan using new teaching methods and providing teachers training. Both cases were dropped at the trial stage.

The CFCF strategic litigation clarified some other aspects as regards discrimination cases: the use of a court-appointed forensic education expert, education experts cited as witnesses of the plaintiffs, legal standing of the NGOs, use of statistics and collection of sensitive data, the binding character of the RED and the European Court of Justice (ECJ) jurisprudence, imposing deadlines for desegregation, ordering the implementation of a desegregation plan.

In the Hajdúhadház case, CFCF claimed that two schools segregated Roma pupils in school buildings based on the disproportions among those studying in the schools’ central building (28 and 22 percent) compared to those studying in separate supplementary buildings (86 and 96 percent in one school and 100 percent in the other) which lacked gymnasium, li-

⁶⁷ Interview with Lilla Farkas, Budapest, February 9, 2011.

brary, computers or specialized class rooms. The first-instance court established that the situation amounted to segregation and that the Roma pupils were directly discriminated against because the physical conditions in the separate buildings were significantly worse than in the central ones. It ordered the schools to end segregation by September 1, 2007 and ordered the local government to refrain from interfering in desegregation.⁶⁸ The Appellate Court found that Roma pupils have been discriminated against by receiving unequal access to education but did not uphold the first instance court ruling as regards segregation questioning the applicability of the EU Race Equality Directive and the ECJ judgments in the case. It maintain that the legal standing of the NGO is not affected by the fact that some of the Roma parents and members of the local Roma self-government objected to the launching of the lawsuit. The Appellate Court ordered the defendants to end the discriminatory practice and to publish the judgment via the National Press Agency.⁶⁹ The Supreme Court granted judicial review to the plaintiff but rejected its request for a referral to the ECJ on the clarifications regarding RED provisions recognizing that RED provisions do apply to the case.⁷⁰ The Supreme Court did not uphold the decision of the first instance court and held that no deadline could be specified for bringing to an end segregation.⁷¹

Another case that brought clarification as regards litigation of segregation cases was the Kaposvár case. The CFCF sued the local authorities of Kaposvár for maintaining a Roma only school. The first instance court found that Roma pupils were segregated and that they received lower quality education, it ordered the town to end segregation but rejected CFCF claim to shut down the segregated school by declining its role in issuing such an order, this being rather a decision of the local council.⁷² The Appellate Court upheld partly the decision of the trial court by establishing segregation and dismissing CFCF's claim of direct discrimination on account of physical conditions and lower quality education. It declined its role as a civil court in ordering desegregation given the public law character of the

⁶⁸ Hajdú-Bihar County Court, Judgment No. 6.P.20.341/2006/50.

⁶⁹ Debrecen Appeals Court, Judgment No. Pf.I.20.361/2007.

⁷⁰ Supreme Court, Judgment No. Pfv.IV.20/936/2008/4.

⁷¹ The solution of the case was however positive: "the local government that ran the schools had closed down one of the three buildings and integrated the Roma children into mainstream classes. The CFCF has raised private funds to implement an integration program in the remaining school buildings in collaboration with the local Roma minority self-government." Farkas, *Limited Enforcement*, 192.

⁷² Somogy County Court, Judgment No. 24.P.21.443/2008/35.

claim.⁷³ “In 2010 the Supreme Court decided in the Kaposvár case that a desegregation plan can be imposed if the complainant specifies the details of the desegregation plan in the original action which means that one has to involve experts before or right after it constituted the action.”⁷⁴

In 2010, CFCF launched another case against the Ministry of Public Resources which inherited the duties of the Ministry of Public Education holding it “liable for maintaining segregation in Hungary by failing to take action against local governments.” The case involves 40 schools and 40 local governments from Hungary. To date CFCF cases lead to integration of 2,311 Roma students in Hungary.

According to Lilla Farkas, the lawyer that brought to courts almost all the cases of school segregation in Hungary, one cannot see an increase in the number of cases of segregation following ECtHR decision in *DH*, *Sampanis* or *Orsus* as “there is not enough specialized knowledge” within NGOs able to bring such cases. In the last five years 17 cases of school segregation were brought by parents and Roma minority self governments before the Equal Treatment Authority. Sometimes they address the cases to the Public Education Office which refers them to ETA. However, *DH* was instrumental in advancing the legal fight against segregation being used in cases where Roma children were misdiagnosed following the testing procedure. What was really important were not the legal argument but the statement of facts that this is a legal issue not a pedagogical or sociological one. “Excerpts from the case were translated and submitted to the courts and the arguments were used in the *amicus curiae* of the Roma Education Fund (REF) in desegregation cases. The Courts did not cite *DH* as it is not a usual practice but they did cite in almost all decisions the REF submission.”⁷⁵

One specific issue was the impediment to cooperate with local Roma leaders and NGOs. Under the Hungarian legal framework in order to be considered eligible for EU funding, a local NGO must cooperate with local authorities. Thus, “local Roma leaders of the self-governments who are usually NGO leaders are dependent on this cooperation and they have to make a difficult choice: should they go with CFCF against the local government and lose the possibility to attract funds for the community or should they try to stay close to the local authorities hoping that they can promote desegregation by implementing joint projects.”⁷⁶

⁷³ Pécs Appeals Court, Judgment No. Pf.I.20.061/2010/7.

⁷⁴ Interview with Lilla Farkas, Budapest, February 9, 2011.

⁷⁵ Ibid.

⁷⁶ Ibid.

Romania

Romania has adopted an anti-discrimination law in August 2000 but it took several years to amend it and to bring it in line with RED.⁷⁷ It established a specialized body with powers to prevent, mediate, investigate, decide and sanction discrimination. The law does not mention segregation specifically and does not define it. However, the victims might choose also to go directly in a court to seek redresses.⁷⁸ Ministry of Education defined segregation of Roma in education in two internal documents: a notification and a ministerial order.⁷⁹ The difference between the two documents is that while notification is similar to a recommendation, the order is an internal document that imposes responsibilities and those that do not comply with its requirements might be administratively held responsible: "Segregation is a severe form of discrimination. Within the educational system, with the exception of those schools or classes where Romani is the teaching language, segregation consists of physical separation, whether intentionally or not, of Roma children from non-Roma children in schools, classes buildings and other facilities in which the number of Roma students compared to the number of non-Roma students is disproportionately higher as compared the percentage of the Roma children of school age within the total school age population in a territorial administrative unit, i.e., city or town. Segregation has as a direct consequence unequal access to quality education. Separation in kindergartens and schools leads always to a lower quality education than in those cohorts, classes or schools with another ethnic majority of school population."⁸⁰

Among the positive aspects of the definition is that it solves the issue of intentionality, territoriality in establishing the imbalance of Roma and non-Roma pupils allocations in schools, classes, buildings or other facili-

⁷⁷ Government Ordinance No 137 from 31 august 2000 (republished) regarding prevention and sanctioning of all forms of discrimination, Monitorul Oficial no. 99 from 08.02.2007.

⁷⁸ The Constitutional Court in its decision 1.470 / 10.11.2009, Monitorul Oficial no. 887 from 18.12.2009 made clear this possibility.

⁷⁹ Notification No 29323/20.04.2004 and Ministerial Order 1540/2007.

⁸⁰ In February 2004 the author provided this definition to the Romanian Ministry of Education and Research and it is incorporated in the internal regulations to desegregate the educational system – Notification No 29323/20.04.2004. I am grateful to my friend Mona Nicoara for her contribution in the elaboration of this definition. The definition was later incorporated in the Annex 1 to the Ministerial Order 1540/2007.

ties, allows for the use of statistical data in arguing segregation cases as well as it defines the conditions when separation does not constitute segregation—education in mother tongue.

Being a special form of discrimination, intention does not matter. However, intentionality plays an important role in segregating Roma children. Often school authorities offer as arguments for separation the unwillingness of non-Roma parents to send their children to the same school or class with Roma children. In the context of this definition, the school authorities should take all necessary measures to maintain the ethnic balance within the student body.

Territoriality is important in assessing the proportions used in this definition. The choice of small administrative units is a more realistic indicator in assessing segregation. If one takes as a unit the whole country then the proportion of the Roma children in the whole country within total school aged population of the country would have been the reference in assessing segregation. This hypothesis does not take into account distribution of Roma and would have been the basis for a social engineering program rather than eradicating segregation. This definition does not cover those few situations when Roma represent an overwhelming majority in cities or towns. In this case, the Ministry of Education should pay special attention and take all the necessary measures to make sure that the quality of education in such schools is at the same level with the regional or national average.

As practice of the National Council for Combating Discrimination (NCCD) jurisprudence has shown, in alleging and deciding segregation cases, the use of statistics, even unofficial, was a frequent element of such cases. The use of reliable statistics in proving *prima facie* discrimination is in line with international standards and ECtHR rulings.

Teaching Romani language as an optional subject or class homogeneity due to common ethnicity of pupils has been used as reasons by school principals to separate Romani children. This definition makes clear the circumstances when separation is allowed. Moreover, the definition eliminates possible tension between a human rights approach and a minority rights approach to education for minorities. This definition shows that there is no mutual exclusion between these two approaches and leaves the decision regarding the teaching language to the parents. It is also in line with ECtHR ruling that there is no waiver to the right to nondiscrimination.

In spite of these favorable factors, the courts and the NCCD did not make important steps in promoting desegregation in Romania. So far there

were 11 cases of segregation decided by NCCD and by the courts in Romania.⁸¹ The NCCD received nine complaints on alleged school segregation cases from Romani CRISS, in other four cases it started the investigation by itself, according to the law. The NCCD capacity to deal with discrimination cases comes into question if one takes into consideration the fact that two complaints regarding the alleged segregation cases in Ungheni and Reghin (Mures county) from 2004 and 2005 have not been yet decided by NCCD by the beginning of 2011. The reason seems to be, according to the reports from the involved party, the files' disappearance.⁸²

There are several factors that might be helpful in understanding this situation. First, NCCD does not justify its decision in a way that the reader understands how the legal provisions apply to the alleged facts. In a decision, the NCCD describes the facts, the positions of different parties, cites the legal provisions and international standards and decides without providing a reasoning. Although the NCCD has investigation powers in no decision it includes citations from the investigation reports prepared by its staff. Thus, it remains a mystery the aspects investigated by NCCD. For example, no investigation in alleged segregation cases were made as regards the quality of education provided in segregated schools or classes. These procedural non-transparencies make it impossible to assess the standards applied by NCCD in examining segregation cases. To date, NCCD has no clear standards that will make its decisions predictable. In its rush for visibility, NCCD got involved in cases that are not related to discrimination but are in the category of hate speech.

From the NCCD jurisprudence it is not clear if and when segregation represents a direct or indirect form of discrimination as the law does not address segregation expressly. The issue has important consequences for human rights activists who cannot predict when separation of children is lawful or not. Segregation of Roma in separate classes was assessed by NCCD as indirect discrimination in *Măcin* case,⁸³ inducing the idea that segregation might be justifiable. However, in other similar cases of segre-

⁸¹ "A decision of the NCCD could be appealed in a court and, in case the court reaches a decision contrary to that of NCCD, it has usually two options: to ask NCCD to reexamine the case or to issue a decision itself. Usually, the courts are choosing to send the case back to NCCD for reexamination." Interview with Marian Mandache, Bucharest, December 10, 2010.

⁸² Interview with Madalin Morteau, the project coordinator with Romani CRISS who supervised the cases at the time, Bucharest, December 11, 2010.

⁸³ NCCD decision 75/02.03.2006.

gation in separate classes the NCCD decided that segregation is a direct form of discrimination⁸⁴ or it does not constitute discrimination at all.⁸⁵

The inconsistency of NCCD in examining school segregation cases reached a peak in its decision in the Glina case, which started ex officio by NCCD following media reporting. The decision makes reference to the definition of segregation provided by the Ministry of Education, cited above. In its ruling on the three alleged segregation situations, the NCCD found a violation of anti-discrimination law just in the school that segregates Roma in separate classes while in the situations where Roma were segregated in Roma only schools the NCCD did not find a violation of the anti-discrimination law. It is difficult to find an explanation for such situations when the definition provided by the Ministry of Education makes clear that “segregation consists of physical separation, whether intentionally or not, of Roma children from non-Roma children in schools, classes, buildings and other facilities.” Considering the lack of transparency and lack of reasoning in its decisions, these inconsistencies of the NCCD in assessing segregation cases could be seen as arbitrary.

In its examinations of segregation cases, the NCCD looked first into statistics and distributions of pupils. Physical conditions⁸⁶ and reaction of the defendant⁸⁷ were looked at in some cases. However, no balancing is described as regards the facts and the interpretation of the law on the right to education or other aspects such as lower quality infrastructure, inadequate and unlawful behavior, individual sufferings, sub-financing or lack of budget transparency. In its defense, NCCD could invoke the quality of the complaints which do not allege a violation of the right to education.⁸⁸ While the quality of the complaints might be considered, usually these being made based on proportions of Roma children in schools and classes, the NCCD cannot be absolved of responsibility as it might initiate a case on its own, it has investigative powers and could look at some issues that

⁸⁴ NCCD decisions 103/24.05.2007; 338/03.09.2007; 330/27.03.2008.

⁸⁵ NCCD decision 396/14.01.2008 *Romani CRISS and Amaro Suno v. Scoala nr. 19*, or earlier the case *European Roma Rights Center, Romani Criss & Fundatia Hochin v. Scoala nr 3 of Targu Frumos* info available at : <http://www.errc.org/cikk.php?cikk=1972> .

⁸⁶ For example NCCD decision 218/23.06.2003.

⁸⁷ For example NCCD decision 75/0203.2006 or decision 330/27.03.2008.

⁸⁸ This argument is made by one of NCCD Steering Board member in an article regarding NCCD jurisprudence on Roma school segregation in Romania. See Dezideriu Gergely, “Segregarea copiilor romi in sistemul educational romanesc si protectia juridica impotriva discriminarii,” *Noua Revista de Drepturile Omului*, no. 1/2009, vol. 5 Ianuarie-Martie, Bucuresti, C.H. Beck, 2009.

are not in the complaints. Moreover, in its examination, the NCCD does not identify any comparator in deciding if a person or a group of persons is treated less favorable than others in similar situations.

Since it was set up in 2003, the NCCD has found violations of anti-discrimination legislation in eight cases of segregation, one being just partial segregation—only in one of the three schools investigated Roma pupils were segregated. The procedure, in spite of the deadlines established in its internal regulation regarding the solving of the petitions, before NCCD takes around 12–14 months and the sanctions cannot be considered to have a deterrent effect. Four violators of the anti-discrimination legislation that segregated Roma children received as sanction a warning while other four received as sanction recommendations. The anti-discrimination law does not provide for recommendation as a potential remedy, being thus an illegal sanction invented by the NCCD. In addition, the victims do not receive any redresses as they have to follow up a NCCD decision in a civil court to seek compensation. In other two cases, NCCD failed to issue a decision.

Since the ECtHR rulings on segregation cases, one cannot observe an increase in the number of alleged school segregation cases nor in the number of NCCD decisions on the issue.⁸⁹ The NCCD makes reference to the *DH* case but it fails to apply the legal standards and balancing developed by the ECtHR in its reasoning. Among the reasons cited by Marian Mandache, a human rights lawyer with Romani CRISS, are inefficiency of the NCCD in combating discrimination in general and the lack of capacity of Roma and human rights NGOs to fight Roma school segregation by litigation and other means.

III

Conclusion

The ECtHR decisions in segregation cases represent steps ahead in promoting desegregation and setting the standards of what practices within the education system are not legally acceptable anymore.

DH II was the first case of indirect discrimination decided by the ECtHR and as such had an immense impact on legal practice. It served in

⁸⁹ Interview with Marian Mandache, head of Human Rights Department of Romani CRISS Foundation, the NGO that assumed a leading role in combating segregation of Roma in education in Romania, Bucharest, December 10, 2010.

further advancing the fight against segregation in Courts as proven by the ECtHR decisions in *Sampanis* and *Orsus*. *Sampanis* and *Orsus* further defined concrete policy standards as regards the right to education and non-discrimination that policy makers have to respect.

Litigation in domestic courts further advanced the standards that school authorities have to respect in order to ensure equal access to quality education for Roma. These standards set by the courts, domestic or international are related and support the development of other standards. Not only that *DH* paved the way for *Sampanis* and *Orsus* but domestic cases from Hungary were instrumental in arguing *Orsus II* in front of ECtHR.⁹⁰ On the other hand, the *DH* was instrumental in arguing cases before domestic courts in Hungary.

The impact of the ECtHR rulings in *DH*, *Sampanis* and *Orsus* brought little change on the ground as regards improvement of the situation of Roma specifically their access to quality education. As Klarman writes regarding segregation cases in U.S. “court decisions such as *Brown* could significantly alter social practices only if lower courts aggressively implement them, Congress and the president enforced them, and local officials could be prevented from nullifying them.”⁹¹ The statement is valid as well for Europe: the ECtHR decisions could alter the widespread social practice of discrimination against Roma in education only if domestic courts apply them consistently and in all cases that are brought before them, the government enforces these rulings and prevents local officials from interfering in desegregation.

However, one need not rely just on litigation in promoting desegregation. One of the strong points of litigation as a strategy to combat segregation is that courts might set clear legal standards on the government action. Nevertheless, courts are relatively weak in determining specific government action. Even when the government might take actions to desegregate, the courts have to rely on partners, usually civil society, to monitor government actions.

Strategic litigation should go hand in hand with community mobilization as in Miskolc case where desegregation was pursued by emptying the so-called Gypsy school and registering all the Roma pupils in the “white school” or with direct negotiation with the local authorities as in Győr and Nyíregyháza cases.

⁹⁰ Interview with Anita Danko, the ERRC lawyer at the time who worked on *Orsus* and prepared legal briefs for the case, Budapest, February 23, 2011.

⁹¹ Klarman, *From Jim Crow*, 380.

One issue signaled by Lilla Farkas was the lack of cooperation among professionals with different background who are interested in school segregation: “there is no bridging between lawyers and sociologists; usually the sociologists are those bringing up new issues and presenting data on segregation. Sociologists, at least in Hungary, do not cite *DH*, *Sampanis* or *Orsus* and, in general, do not take on board legal arguments. From the legal profession, without the sociological arguments we could not have won these cases.”⁹² This chapter and the whole book address this issue as well.

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Interviews

Interview with Anita Danko, Budapest, February 23, 2011

Interview with Lilla Farkas, Budapest, February 9, 2011.

Interview (phone) with James Goldston, February 7, 2011.

Interview with Marian Mandache, Bucharest, December 10, 2010.

Interview (phone) with Daniela Mihailova, January 25, 2011.

Interview with Madalin Morteau, December 11, 2010.

Interview with Jan Stejskal, Prague, October 1, 2010.

Interview with Rumyan Russinov from Bulgaria

Rumyan Russinov was the deputy director of the Roma Education Fund and the director of the Open Society Institute's Roma Participation Program. As the director of the Human Rights Project, a Sofia-based nongovernmental organization, he led the team of Roma activists that negotiated the program for Roma with the Bulgarian Government after the collapse of the communism.

The interviewers were Iulius Rostas, Mihai Surdu and Marius Taba.

Question: Thank you very much for agreeing to an interview. We have been talking with Romani activists at the forefront of the desegregation process in this part of Europe, and you are one of them.

Rumyan Russinov: I appreciate the idea very much. In my opinion it is a very timely effort, and I believe that desegregation is one of the most important processes which have taken place in, I would say, the past 20 years in the Romani movement. I agree that we need a more systematic effort to analyze it.

Q.: How would you describe Romani education during the communist period? What are the positive and the negative aspects of that period?

R.R.: Specifically in Bulgaria, we inherited the present segregated schools in Roma neighborhoods from the communist times. These schools were built in the end of the 1940s–1950s as part of the state's campaign to fight mass illiteracy. Roma were also targets of this policy which resulted in the construction of the schools in Roma-only neighborhoods in cities. Despite the separate educational facilities for Roma, however, the levels of segregation of Roma during the communist period have not been as

extreme as they became after 1989. The reason is that all Roma worked together with non-Roma, there was a contact between them and the majority society. Moreover, in smaller towns and villages the schools were integrated. It is no wonder that a big percentage of the Roma intelligentsia came from these places. However, the noxious effect of what later on was known as “the Gypsy schools” became evident in the years after 1989 when a large part of the Roma population found themselves unable to compete under the new conditions because they had low education and outdated skills. Whatever the initial intentions of the state had been, in 40 years, the separate schools created second-class citizens.

Q: Were the educational needs different in communism and in the transition period, after the changes? Are there similarities and differences in the way Roma perceived education in these two different periods?

R.R.: First of all, we should not generalize about Roma. We are different: There have always been people who despite all circumstances, despite bad educational policy, managed to educate themselves. There are others who had more unfortunate circumstances and live. But, of course, state policies matter a lot. I have to say that nowadays, the state is less concerned with educational policies in general, and even lesser with the educational status of Roma. The Roma issue in Bulgaria is not the only one ignored on the list of important issues.

I have to say that during communism our status was relatively better, because as part of the working class, Roma were also part of social interaction, part of the system. They were integrated into society, few were marginalized. Today, without jobs, isolated and with almost no contact with the majority, many have become outsiders.

Q: This “better status” in communism was somehow related to the circumstance that the system treated the working class more favorably than nowadays, and Roma had jobs during that time.

R.R.: Yes, I think the most important thing was that Roma had jobs. They had a steady income and status. They thought of themselves as part of the system. When Roma lost their jobs, they lost contact with society and became outsiders, especially when their unemployment lasted for many years. When you are an outsider, you have no optimism; you think less about the children and what education they get. Such circumstances tend to change one’s way of thinking. Many Roma who were insiders then, are outsiders now.

However, although they lost status, they are not marginalized because they still think of themselves as insiders. This self-perception makes the

difference between those who are marginalized and those who are not. Many non-Roma perceive Roma in general as marginalized and those like us are rather an exception. For me the difference is in the way Roma perceive themselves in the social system and the attitudes they develop towards this system. From this point of view, most of the Roma are not marginalized.

Q: What similarities are there between communism and the period of transition in regard to Roma education?

R.R.: I was 22 when the communist system collapsed, so I remember well what it was like during those times. The first difference was dramatic; the state simply deserted its key responsibilities, as I said not only with respect to Roma policies. Second, Romani parents became jobless and this changed the situation dramatically. Third, generally, values started to change, not just for us, for all of society. Old values vanished, new ones did not appear. Consumerism overtook everything. There was a vacuum. What remained from the embattled educational system is not capable of guiding children in the new circumstances. For many Roma, the only accessible institutions were, and are, various evangelical churches. They offer a system of values, perhaps not an ideal one, but one that is better than nothing. One of the reasons they were so successful among Roma is that they went to the community and sought to help the people. Even if they did not solve their problems, at least there was somebody who approached them and listened to them. These churches showed Roma that they are not forgotten.

Q: Let us speak about minority education and how authorities dealt with minority education in transition. Is the mother tongue taught in Bulgarian schools?

R.R.: Very little. There have been certain attempts for the Romani language to become an optional subject, but this happened only in two towns—in Kyustendil and in Russe, in a very small number of schools.

Q: Why do you think the number is so low?

R.R.: First of all, because Roma ourselves, do not push for Romani language classes at school. Many Romani parents would say “we speak the Romani language very well. It is better to learn to speak good Bulgarian.” Also, part of the Romani community speaks Turkish as a mother tongue and some of them identify as ethnic Turks. For example, in the 2001 census 370,000 identified themselves as Roma, and 320,000 marked Romani language as their mother tongue.

Q: That’s quite a high percentage that could serve as a base for minority education.

R.R.: Yes, indeed. However, we have a combination of weak demand on the part of Roma and inaction on the part of the state.

Q: Do you think the relatively low interest on the part of Roma to study in the Romani language within the educational system is somehow related to this ambiguous identity?

R.R.: I think the main reason for this is the fear that the study of the Romani language may lead to isolation from the rest of society.

- Q: How does the educational system deal with this complex system of Romani identity?

R.R.: The state has made some small steps to recognize the Roma identity in the educational system. For example, in primary schools, children read Romani folklore stories and sing Romani songs. I think these are steps in the right direction but they are very insufficient.

Q: When was the issue of segregation of Romani children in schools discussed for the first time publicly in Bulgaria? When did it become an issue, a problem?

R.R.: I remember reading an article written by Elena Marushiakova and Vesselin Popov entitled "The Gypsy schools," published in the magazine of the Bulgarian Helsinki Committee, *Obektiv*. This article rang the bell that segregated education is a serious problem. At the time as part of the team of the nongovernmental organization Human Rights Project, I was travelling around the country, visiting Roma neighborhoods and collecting information about various problems facing Roma, including problems in education. People told us that Romani children complete primary school in the segregated schools and they are unable to read and write their names. In 1995–1996 we started raising this issue at meetings with various government authorities.

Q: Was there research on the issue, or were there politicians or activists who raised the issue?

R.R.: Romani politicians were not publicly visible, neither did they speak about Roma issues in public. Non-Romani politicians do not care. There was NGO activism, but there was, and still is, an absence of political participation by Roma. To some extent, NGOs filled this vacuum and played a role in raising the most important issues for public discussion. We were the most active Roma rights non-governmental organization of that time. In 1997–1998, we started elaborating a framework program for equal participation. This was the first fundamental document which we, the Human Rights Project, produced in 1998. One of the chapters in this Program was dedicated to education and school desegregation. This document which was adopted by the Bulgarian government in April 1999,

was the first acknowledgement by the government of the problem with the segregated schools. It was also the first political platform which promoted Roma integration and school desegregation in particular.

Q: What do you think the government's motivation for holding these negotiations with the Romani activists was? Was it a sign that the government recognized segregation as an issue?

R.R.: In the beginning, when we proposed a framework program for Roma integration the government tried to ignore us, as expected. The government at that time did not have a culture of listening to the voice of civil society. When I approached them to negotiate the document, their reaction was, "who are you, young man? You are not legitimate." To a certain extent, this was true, because I was an NGO activist, no one voted for me to be a representative of Roma in these negotiations. The way to become legitimate was to mobilize big support from Roma NGOs and activists throughout the country. We launched a massive public campaign and involved representatives of international organizations as well. All this made it impossible for the government to continue ignoring us. For example, on March 25, 1999, in my capacity of chief negotiator of the Framework Program on behalf of Roma NGOs, I invited representatives of the Council of Europe to support Roma NGOs to persuade the Bulgarian government to adopt the proposals for government policy in the Framework Program. On that day, the spokesperson of the Prime Minister called me and said that the Government is ready to accept our proposals.

Q: What was the key word you started using when negotiating with the government?

R.R.: We started using the word *desegregation*.

Q: When was this?

R.R.: In 1998, when we, the Human Rights Project, launched the campaign for the adoption of the Framework Program for Integration of Roma by the government. I think this was the first more or less coherent concept of Roma integration which appeared after 1989. We started to have this more fundamental understanding that yes, we want to be together with non-Roma, that we are part of society and we do not want to be the losers. At the center of this program was the proposal to desegregate the "Gypsy schools."

Q: The section on Roma of the Agenda 2000 of the European Commission, released in August 1997, and intended for candidate countries for EU membership had an influence on Roma related policies in those countries. Do you think that, in that context, the Bulgarian government became a little more open in at least accepting discussions with Roma?

R.R.: I believe it played a role, indeed. I think during the entire pre-accession process, the EU pressured the governments to create political will at the national level and make the process of policy-making for Roma integration an irreversible one. However, as we all know this goal was not achieved. Governments found a way to report progress to Brussels, without actually making any progress for Roma integration. That is why it is very important that the EU should maintain its pressure. At the same time, the EU and international organizations should continue supporting Roma civil society organizations to be active participants in the making of policies on Roma integration.

Q: So, at the end of the day, is it expedient to have pressure from outside?

R.R.: Definitely, and this pressure should persist until we have political will at national level to develop and implement integration policies.

Q: Moving back to the issue of segregation of Roma in the communist times in Bulgaria, it is clear that it existed. What were the types and patterns of segregation then?

R.R.: First of all, it was geographical segregation, and second it was educational segregation. Geographical segregation was prevalent in big cities, in smaller towns and villages Roma and non-Roma lived together. Where separate Roma neighborhoods were formed, the state also established 1–2 primary schools, which I mentioned previously. Over the years, the quality of education in these schools degraded. In later years, some of these schools were labeled “schools for children with low lifestyle and culture” which indicated that the state was not willing to ensure an equal standard of education for Roma children.

Q: Was school segregation acknowledged as an issue during communism?

R.R.: No, nobody recognized this as an issue. The goal of state educational policy at the time had not been to secure equal education for Roma but to secure a minimum level of literacy and a vocation. That is why some of the schools based in the Roma neighborhoods had intensive vocational training at the expense of academic subjects. When we challenged separate education of Roma in the 1990s, this was a new paradigm. Until then, the issue was not that separate education is bad—the issue was that Roma do not want to and are not able to accommodate to the mainstream educational system. When Roma started demanding equal education in integrated schools, the government was not anymore in the position to excuse the failures of its policy with the Roma.

Q: What was the extent of segregation under communism and now? Is it better, is it worse?

R.R.: I already partially addressed this question—the level of segregation of Roma today is much higher. Before 1989, Roma had contacts with mainstream society at their workplace. Today, many of them are totally locked up in their neighborhoods.

Q: Who do you think contributes most to maintaining the status quo in segregation? Why is segregation maintained? Who are the most important players who maintain segregation?

R.R.: The main factor is that education in general is not among the priorities of the state as it emerged in the transition period. Roma education is even less interesting for the state. Another factor is that a large number of teachers and school personnel fear that they will lose their jobs. Also, during the 1990s, many donors supported programs to improve the education of Roma. Unfortunately, this money went mainly into the segregated schools. Ironically, again, segregated schools were reinforced with good intentions. Maybe some donors at some point realized that this was a wrong direction, but, many preferred this way because it requires less effort and does not involve confrontation. Breaking the status quo is a difficult process: Working with parents on a daily basis, planning the enrollment of Romani children with school authorities, monitoring the process and evaluating the results is far more demanding than buying books and sports facilities for Romani children.

Q: What is the role of the Romani parents in maintaining the status quo?

R.R.: Many parents, unfortunately, do not understand the consequences of segregation and for years no one has made an effort to explain to them.

Q: What motivated, for example, school personnel to oppose desegregation or maintain segregation?

R.R.: The personnel of segregated schools immediately turned against the process. They understood the trend and, of course, they were afraid of losing their job. But schools exist to provide quality education to children, not to maintain jobs for the teachers.

Q: What were the reasons of the donors and of the NGOs worked with segregated schools?

R.R.: Unfortunately, some of the donors do not believe that Roma children are capable for mainstream education. The way they express this view is to emphasize the specificity of Roma culture. They have their own prejudices in understanding the issue. Also, in the context of segregated

schools, the work of the donors has bigger visibility due to the fact that these schools are almost deserted by the state and even minor improvements, can be easily seen.

Q: Why do you think donors prefer to go to the poorest communities, to the most marginalized ones?

R.R.: I think this is normal. Usually, the first thing is to go to those who really need help. It is true that the percentage of marginalized Roma increased in the transition period but as a group, Roma are not marginal. Respectively, policies and measures which are designed to address the problems of marginal communities, although well-meant, deteriorate the situation of Roma and contribute to their marginalization.

Q: Still, many programs are targeting Roma, but in fact they focus on the poorest communities.

R.R.: True, the prevailing part of the donors supports the poorest. I am not against this. The question is not whether to support the poorest Roma but whether to channel all support towards these parts of the Roma communities only. Integration of the marginalized Roma is a long process; it does not give results promptly, it takes probably a generation. In the meantime, the lack of results for a long period of time may undermine the whole idea of the integration of Roma. There are also those who are tempted to explain the lack of results with the Roma themselves—that they have no aspirations or are not able to integrate. We are fortunate that there are donors like the Open Society Institute and the Roma Education Fund which support programs for the creation of a Roma elite. School desegregation and promotion of Roma in higher education are efforts in this direction.

Q: How have Romani organizations and activists reacted to the issue of segregation? Have there been Romani groups which oppose school desegregation?

R.R.: Some of them, those who had projects in the segregated schools, reacted negatively. Others had no reaction, but many reacted positively. In the beginning, they did not understand exactly what it was about, but little by little they came to understand that, in fact, this is good for Roma. It means quality education for our children and this is the first step towards real integration.

In the past 20 years, many Roma organizations have generally played a very positive role in the movement. Some Roma organizations simply followed the policy of the donors, without questioning them. This usually happens with organizations which do not have support in their communities and derive their legitimacy not from the people who appreciate their

services or support their positions but from the donors who funded them. Other organizations are trying to shape their own views, but, unfortunately, the first type is prevalent. Part of the Romani organizations do not think strategically, they tend to follow instructions. It is unfortunate because the last twenty years offered us a unique opportunity which we may never have again. Donors are already moving to Central Africa, to Central Asia, etc. I am worried that the Roma movement is not prepared for this withdrawal. I observe that when donors withdraw, many organizations remain confused, they have no ideas about Roma integration.

Q: How have political parties and the government reacted to this issue? Do they understand the problem? Have there been politicians who speak against segregation?

R.R.: No, the political elite still does not understand it, and they do not care. In my view, it is best if parties include desegregation in their programs. Some do have it in their programs but from their public speeches it seems that they do not understand it. The government first denied that this is a problem. Then they acknowledged it but did not take any responsibility. They said it was inherited and the current government did not have a policy to segregate. In 2002, there was a breakthrough when the Ministry of Education issued the so-called instruction for school desegregation. It meant that the problem was not only acknowledged but that there were policy-makers who thought how to solve the problem.

Q: How did academic circles react to the issue of segregation? The universities, researchers?

R.R.: Most of them positively. In fact, they understood their interest in this process. They realized that, within this movement, they will be able to engage in projects, in teacher training, methodology seminars, etc. and they supported it. We worked with Sofia University, with the Dupnitsa Teacher College, and they were quite open.

Q: Let's move to Vidin, where everything started. Can you give us some background about what happened there, and how the idea came about?

R.R.: I would not say that I am the author of the idea, and I do not think it is important. At some point, discussing what government policies are needed to integrate Roma, we realized that Roma-only schools produce alarming results. In 1998, we negotiated with the government the adoption of the Framework Program which I mentioned earlier. It contained a very clear statement on the elimination of segregated education. In May 2000, I took the position of Director of the Roma Participation

Program (RPP) at the Open Society Institute, in Budapest. In August 2000, RPP funded the first desegregation project in Vidin. Why Vidin? Because we needed a strong person to lead the project. Donka Panayotova was this person, respected both by Roma and non-Roma in the town. She was a teacher herself, she knew the situation well and she had the capacity to go there and to start the “revolution,” as we called it.

In the Romani neighborhood of Vidin, called Nov Pat (New Way), between five to ten percent of Romani children did not go to school at all. We targeted the middle class of the Romani community, people who were skilled workers for enterprises before, and who lost their jobs after 1989. Donka set up the organization Drom and together we created a support model for the Romani children from the neighborhood to access mainstream schools. We approached our target group as part of the solution—that’s why our first task was to talk to the parents and motivate them to send their children to schools outside the neighborhood. Next came our work with the school authorities. We had to make them open, receptive and helpful in the process. We set up a team of people whose task was ongoing communication with parents and teachers about the progress of the child at school. Based on this information, Drom proposed to parents after-school assistance for the children. This was very important because if we had left the children on their own, many would have met difficulties in the new competitive environment and would have lost motivation to go on. Vidin is one of the poorest regions in Bulgaria, and the Romani community is also very poor there. In the beginning, a group of wealthy Romani businessmen were against the process as they thought that it would undermine their position and authority among Roma, but Donka, who is very good in diplomacy, persuaded them to be supportive.

Q: How did the Vidin project eventually unfold?

R.R.: In addition to those steps which I have already described, there was a powerful information campaign on the local Roma TV. The direct dialogue with the Roma community was one of the key factors for the success of the initiative. When there is direct dialogue, you can minimize the prejudices and fears of the people. Then, when the children were enrolled in mainstream schools, we started busing them from the *mahala* to mainstream schools. Each school where Romani children were placed had one or two supervisors, who took care of the children. When there was a problem related to learning, they discussed it with the teacher. This is how the Vidin model emerged in the school year 2000–2001. In the beginning, teachers in the mainstream schools were not enthusiastic about the initiative—some of them were openly opposed. They were concerned that “the

level of education may decrease ... and there may be confrontation.” It was very important that Donka is part of the pedagogic community in the town, and a respected one. In this capacity, she had negotiated the enrollment with the school principals. After the first semester, I spoke to some of the teachers. One of them told me, “you know, these children are like the rest of the class.” You can change things only through real action. Reports and awareness-raising cannot achieve much. You can campaign about school desegregation or talk to the media, but nothing can be as effective as bringing the children physically into the mainstream schools. But the real change started only then, after the children went to the mainstream schools.

Q What was the reaction of the Romani parents?

R.R.: In the beginning, they reacted cautiously. Some were afraid their children would be harassed. It was very important that there was a Romani NGO to take care of the children. The presence of the supervisors was a very important argument in convincing Romani parents.

Q: Did the number of Romani children enrolled in mainstream schools eventually increase?

R.R.: Yes, the number of children kept increasing. For the parents this process was also very important. Psychologically, it helped them restore their self-esteem. Many of them had a decent social status when they were younger, and after 1989 they started on a downward spiral. To see their children together with Bulgarian children gave them hope. So this was very, very difficult in the beginning.

Q: What has happened since Vidin? Has it reached the level of a state policy, or has it remained just an isolated project?

R.R.: As I said in the beginning, the government preferred to explain the problems of Roma education by referring to the Roma themselves—as a product of their lack of interest in education, early marriages, and so on. These problems indeed exist. But if there is political will to develop and implement a policy, these problems should not be used as an excuse to do nothing. The most important question is, do we treat the Roma as able to be rescued or not?

Q: You gave this example with the Vidin case. Did the government take it? Do they consider Roma now as able to be rescued, and have they elaborated a policy based on this?

R.R.: From the very first day, our goal was to persuade the government to develop a policy based on the Vidin model. In 2002 there was the first breakthrough, then in 2004, the Ministry of Education adopted a strategy for school desegregation. I am sure that without the positive ex-

amples of the school desegregation projects, already in several towns in the country, we would have no strategy today. We launched discussions in 2004 using arguments and international pressure, and, I cannot say that the government was against it. As with all governments which are lazy and bureaucratic, it was more laziness and bureaucracy than opposition. There was an understanding that, yes, this is the right way, we have to do something.

Q: Which were the most important directions of this strategy?

R.R.: First, we emphasized the process of transferring Roma children from Roma-only schools to mainstream schools. Second, this transfer should be accompanied by the respective educational and awareness-raising measures in order to create the environment in which integration is possible.

Q: Did the strategy provide financial resources for this process?

R.R.: Not the strategy, but the Roma Decade Action Plan of 2005 did. The action plan of 2005 envisages Roma inclusion measures in four main directions: education, employment, housing and health. In the section on education, number one is school desegregation, with financial support. But, unfortunately, it never happened. Apart from some financial support from municipalities, we did not receive money for desegregation from the government. Out of ten municipalities in which the school desegregation projects are currently implemented, only six provide support for the process, including direct financial support.

Q: Were there any initiatives made by the government?

R.R.: No, it was always us, the Roma NGOs, that were active and showed initiative. The government only approved or disapproved.

Q: What has happened to the desegregation strategy?

R.R.: This strategy illustrated the government's intent, but it was never put into practice. It did not have any practical effect until 2007, when the government included it in the budget. The real practical effect came with the creation of the Center for Educational Integration of Minority Children and Pupils at the Ministry of Education. The original idea behind the Center was that it would manage a fund to support school desegregation activities. A draft law for the fund was prepared by the Ministry of Education but it was rejected in Parliament.

Q: Can we say that school desegregation is state policy in Bulgaria? If not, what are the main obstacles to it?

R.R.: The Bulgarian government has officially declared that it will pursue a policy of school desegregation, but has done little to make good on this commitment. The main obstacle is—as I mentioned earlier—that

the government does not have the political will to implement school desegregation. In addition, the Bulgarian government traditionally is cautious about undertaking visible measures to help the Roma. The political elite are afraid to support measures for them, and to talk publicly about such measures in order not to antagonize the majority.

Q: In assessing the desegregation process, what results have been achieved so far?

R.R.: For me, the main achievement is broader than the quality of education. The children who left the segregated environment have a broader horizon. Some of them will be good students, others will not. But all of them will see themselves as part of society, as equally valuable persons. Before, they used to have the understanding that the ghetto is their place. Now they dream of becoming doctors and lawyers. Some of them will not become doctors, but the first thing is to dream, that is why I say their horizon has opened. Then they will not need our efforts to desegregate their children; they will do it for themselves.

Q: How far are we from that point?

R.R.: This will take a generation.

Q: What has not been achieved yet?

R.R.: Despite the progress made, there are several things which we did not manage to accomplish. First, we did not manage to move the process into the hands of the state—it still very much depends on the efforts of the Roma NGOs. Second, we did not manage to broaden the scope of donors who support the process. And third, due to limited resources, we were not able to scale up the projects to involve more children.

Q: What is the role played so far by courts, the judicial system in fighting segregation?

R.R.: When a court decision is delivered, the government will pay the fine and they will forget about it. Tomorrow another violation may lead to another court decision—if we are lucky—a favorable one, and the government will pay and again forget.

No, in my view, court decisions cannot change our situation in education. We need other actions.

Q: How have international organizations and donors reacted to the issue of segregation and desegregation?

R.R.: Some of them reacted very positively. For instance, the Open Society Institute is a major donor which started financing the project from the very beginning, and still continues. In 2005, the Roma Education Fund continued what the OSI had started. I value this support very highly, and urge them to continue providing funds for school desegregation. The governments

of Sweden, the Netherlands and the United Kingdom also donated funds for school desegregation to the REF. At the EU level, there are several resolutions of the European Parliament which call on national governments to eliminate segregated education of Roma. The Vidin model of school desegregation is recognized as a good practice by the European Commission.

Nevertheless, I cannot say that there is a coherent policy at European level. Honestly, I don't know why, given that the EU is increasingly involved in promoting Roma integration.

Q: Do you see any risk that donors will abandon this area?

R.R.: Yes, there is always the risk that donors would consider something else more important. If the government is committed to pursue school desegregation as a goal, the government will actively seek support for it and will find it. The problem is how to effectively press the government. We need to change the message and make the majority aware that they need us and that they share the loss if we cannot work for society. We need to ask the majority whether they want Roma to be receivers of social aid or taxpayers. If the latter, the majority should also pressure the government to desegregate education.

Q: What is the main lesson learned from this desegregation process?

R.R.: It gives us optimism that we, as activists, can do something useful for our people, something visible, and can prove that Roma can be rescued. Because many believe that whatever you try out for the improvement of the situation of Roma, it will not work. This is not true: we have proved the opposite.

Q: What, in your view, are the next steps as regards desegregation in your country?

R.R.: I believe that we, the NGOs, have paved the way, and it is high time the government took over from us. The government always says that they need positive examples, or best practices, in order to implement them on a large scale. Here are the best practices, please go ahead. Currently, by maintaining the ghetto schools, the government is paying for segregation.

What we want is very simple: We want the same budget, for the same children, to be spent for mainstream schools, not for the ghetto schools. So, actually it does not cost money, only an effort to do it. What we need now is more political will. Overall, I am optimistic: Roma want desegregated education; the majority is not against it. So if we push a bit more, maybe we can do it.

The Politics and Reality of Romani School Desegregation in Bulgaria

DR. KRASSIMIR KANEV

The idea of the desegregation of Romani education in Eastern Europe originated in Bulgaria. There are at least two reasons for this: the first is the extent of segregation there, which seems to be the biggest in the region and took egregious forms. The second reason is rooted in the Roma civil rights movement, which was already quite mature by the mid-1990s and was almost unanimous about the need for desegregation. In about 1998, the government and civil society seemed to be in agreement on the need for desegregation and on the methods through which it was to be implemented. This consensus was written into official documents adopted at the top governmental levels. Commitments were subsequently reconfirmed on numerous occasions. Yet, started as it did as a non-governmental operation, desegregation continued to be implemented predominantly through non-governmental initiatives with little commitment from the government.

This article will explain the meanderings of the issue of Romani school desegregation in Bulgaria, and look more closely at what underlies these developments. It explores the origins of segregated education, its forms and extent, formation of the consensus for desegregation, as well as subsequent political, policy and legal developments. In the end, it argues for some concrete measures that need to be implemented in order to achieve sweeping results.

Origins of Segregated Education for Roma in Bulgaria

For the most part, all the current forms of segregation in Bulgaria developed under communism. It is based on the segregated ethnic communities in place since the Ottoman-era *mahala* system¹ and even before, as well as

¹ OSCE, *Report on the Situation of Roma*, 70.

in the equally strong tradition of their mother-tongue schooling in separate educational establishments.² In the peasant societies of Eastern Europe before 1945 however this did not automatically result in segregated education for Roma. There were no Romani mother-tongue ethnic schools at that time and the Roma children would usually attend, when they did, the only village or small town school together with the other kids.

It was under communism that large Romani urban ghettos emerged with schools attached to them. These were effects of the general process of urbanization and the rapid natural growth of Roma population due to its improved access to general welfare benefits and to health care. The creation and expansion of urban Romani ghettos was a largely spontaneous process, partly a result of an inefficient integration policies and partly a consequence of the disregard under communism for the rule of law, especially in the sphere of property relations and urban planning. It was also an indication of the government's turning a blind eye to the needs of Roma communities, an expression of traditional attitudes toward Roma as being part of a closed group with fundamentally different values and customs, where society has no stake and no need to invest into maintaining public order and creating institutions to serve community's needs. Integration during communism was a period of sharp discrepancy between words and deeds: ghettos and segregated schools developed unhampered despite policy documents of the Bulgarian Communist Party calling for their elimination.³

Schools attached to Romani ghettos served exclusively the educational needs of the Romani children living there. In addition to their proximity to the neighborhoods, segregation was cemented also by the school districting system, making the free choice of school very difficult, if not impossible in practice for the Roma. These "basic schools with enforced labor education" (BSELE), also known as "Gypsy schools," were created for students branded officially as having "a backward way of life and low cultural level."⁴ There were 131 such schools in the country, of which 31 adopted special curricula intended to cultivate basic manual skills and vocational training already from the first grade. In addition to academic programs, they were expected to produce various goods for sale.⁵ Their curricula were different from mainstream schools, producing graduates

² Sachkova, "Politiki odnosno obrazovanieto na mashinstvata v Bŭlgaria."

³ Kanev, "Local Initiatives: Desegregation in Bulgaria," 222.

⁴ Marushiakova, *Tsiganite v Bŭlgaria*, 91.

⁵ *Ibid.*, 90–101.

who were unprepared to continue to higher levels of the national educational system. The government's approach to the purpose of Roma education was to offer "initial literacy and adoption of labor habits and skills."⁶ Thus, segregated Romani neighborhood schools became epitomes of the communist vision of Roma integration—unskilled workers at the bottom of society. This social status was bound to lead to vast unemployment during economic hardships, which happened with the first blows of economic crisis after the fall of communism.

Mother tongue or bilingual education was out of question for Roma even during the first years of communist regime when other ethnic minorities were offered such opportunities.⁷ The chance that the government would adopt such programs declined, especially after the mid-1960s when the regime became increasingly nationalistic and started its attacks on ethnic diversity with consecutive waves of assimilationist efforts towards all ethnic minorities. In the 1970s and 1980s, with the rise of the official ideology and politics of the "homogenous socialist nation," ethnic minorities in Bulgaria, including Roma, were made to live with an awareness of being defective citizens because of their ethnic identity. There was enormous cultural pressure on minority children schooled in mixed educational environments to denounce their ethnic identity and to assimilate with the majority.

On the other hand, Romanes and Turkish have traditionally been widely used as mother tongues and as predominant means of communication by Bulgarian Roma for centuries. Roma children were and continue to be poorly prepared to communicate in Bulgarian, the only language of education they have been offered in the schools. Thus, general poverty, the low educational background of the parents, poor command of Bulgarian and the inability of the school system to adequately respond to their educational needs, were all factors leading to low academic achievement, high drop-out rates, and disproportionate tracking of Roma into the remedial school system for children with developmental disabilities. The latter, under communism with its obsession of institutions, developed as a system of special schools, in which students were segregated from their peers and often with their families (in the not very rare cases of year-round special boarding schools). Once tracked into this system, which in the case of Roma often happened already in the first grade, the child was effectively prevented from completing the basic school curriculum and to receiving

⁶ Ibid., 91.

⁷ Yalumov, *Istoria na turskata obsnost v Bŭlgaria*, 312–324.

an appropriate diploma. As shown on numerous occasions, children enrolled in these schools are able to handle the academic program in regular schools if they are offered adequate support.⁸

The combined effect of segregated neighborhood schooling and tracking into the remedial schools had devastating consequences on the general educational background of Roma population in Bulgaria and on the chances of its social integration. The communist modernization of life and social structures failed to offer a chance for decent and equal participation of Roma in society.

Extent and Forms of Segregation

Educational segregation of Roma has three forms: residential segregation in schools established in or near Roma neighborhoods to serve the needs of the local community, disproportionate placement of Roma in remedial schools for children with mental disabilities, and disproportionate placement of Roma in schools for children with behavioral challenges.

Residential segregation is by far the most widespread and has been the most difficult to reform. The former BSELE form the core of this system. According to the last official information from the Ministry of Education from 1990/91 school year, before their transfer to the mainstream school system, all BSELE enrolled a total of 17,880 students and had a production plan of 317,415 BGN (\$44,706 as of 1 June 1990).⁹ The former BSELE are however by no means the only residential segregated schools for Roma in Bulgaria. Already under communism there had been other neighborhood schools that enrolled almost 100 percent Roma but did not formally belong to that system. To these, schools in which Romani children represent more than 50 percent of those enrolled should be added. The approaches of the scholars, officials and NGOs in defining what constitutes a residentially segregated school and who should be considered Roma differ as do the estimates of the extent of residential educational segregation. Table 1 below sums up some of the most recent estimates.¹⁰

It looks as if between 50 percent and 70 percent of school age Romani students attend residentially segregated schools, i.e., schools where they

⁸ *School Success for Romani Children*, December 2001.

⁹ Ministry of Education, *Spravka no. 1 za OUZTO v stranata za 1990–1991 uchebna godina*.

¹⁰ OSI/EUMAP, *Equal Access to Quality Education for Roma*, vol. I, 43–44.

represent more than 50 percent of the students enrolled. According to a 2005 study of the OSI-Sofia, the total number of schools with more than 50 percent of Romani students in Bulgaria was 554, i.e., almost 20 percent of the schools in Bulgaria. At the same time, the schools with more than 30 percent Romani students were 960, i.e., 35 percent of all schools.¹¹ According to the same study, a school that has more than 30 percent Romani students tends to be quickly transformed into predominantly Romani, because the non-Roma parents withdraw their children from that school.

Roma represent a majority of the student body in the remedial schools for children with developmental disabilities. According to a 2002 study of the Bulgarian Helsinki Committee at least 51 percent of the students in these schools in 1999 were of Romani origin, which at the time amounted to around 5,000 students, i.e., over 6 percent of all Romani students in the respective age group.¹² Since then both the number of remedial schools and the number of students enrolled in them decreased substantially (see Graph 1 on page 161). But Roma continue to be overrepresented in these institutions because of general poverty, poor command of Bulgarian language, and the relief some of these boarding schools offer for the poor families in caring for the children.

Special schools for children with behavioral challenges represent the third form of segregated education for Roma. According to a 2001 study of the Bulgarian Helsinki Committee, Romani children in these institutions were between 60 percent and 70 percent of the 3,000 strong student body at the time.¹³ These are de facto places of incarceration for children displaying deviant behavior. The Juvenile Delinquency Act, an old and outdated law, one of the few remnants of the communist methods of social control, provides for the possibility of placement there of children who had committed “anti-social acts,” a concept that is rather vaguely defined in law and arbitrarily interpreted in the jurisprudence. The placement procedure lacks basic due process guarantees and allows for selective targeting and tracking to those institutions of Roma children.¹⁴ In some of these, mostly village schools, Roma children are enrolled only because this is the

¹¹ IOO, *Romite v Bŭlgaria: informatsionen spravochnik*, 31.

¹² Bulgarian Helsinki Committee, *Pomoshnite uchilisha v Bŭlgaria*, 7.

¹³ Bulgarian Helsinki Committee, *Sotsialno-pedagogicheski vzpitatelni uchilitsa-internati*, 391–92.

¹⁴ See more on the system in Kanev et al., “Bulgaria,” in *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*.

only school in the locality. On several occasions the UN Committee on the Rights of the Child has proposed abandoning of the concept of “anti-social behavior,” the establishment of juvenile courts, improved due process guarantees, and assurances that children in conflict with the law below the age of criminal responsibility are cared through the system of social welfare.¹⁵

The Formulation of Desegregation Policies—Issues, Actors, Obstacles

The concept of segregation and the need for desegregation of Romani education emerged in the mid-1990s among the Romani activists and NGOs.¹⁶ The issue came up in the first place because of the flagrant discriminatory forms and the vast extent of Romani educational segregation in Bulgaria. The Romani civil society movement had to face this reality, but it also looked for historical precedents and models of action based on similar movements around the world. The civil rights movement of African-Americans in the United States, with its struggle for school desegregation in particular, was an obvious analog. From it the Bulgarian movement borrowed the political goal of integration.

Romani activists and NGOs, as well as ethnic Bulgarian human rights activists who supported their plight were almost unanimous on the need for educational integration.¹⁷ In this regard the struggle of the Romani activists during the first years of democracy differed from that of many other minority rights activists. The bulk of the struggle for the latter, including the Turkish, Armenian, Jewish, and Macedonian movements, was to restore ethnic schools—which had been closed by communist authorities—with education in their minority language. While many Romani activists too advanced the issue of studying Romanes in the public schools, it was overshadowed by the vision of a sweeping desegregation.

¹⁵ Most recently: CRC, *Concluding observations of the Committee on the Rights of the Child: Bulgaria*, 23/06/2008, CRC/C/BGR/CO/2.

¹⁶ Interview of Rumyan Russinov in this volume.

¹⁷ Among the rare exceptions from this consensus was the most outspoken Romani MP from the first democratically elected parliament, Manush Romanov. He feared that integration of Roma might lead to their assimilation (personal communication to the present author, Bratislava, March 1992). However, he never obstructed the subsequent struggle for educational integration.

Since the fall of communism, political representation among the Roma has been very poor. Unlike the Turkish minority, Roma could not elect politicians who could meaningfully negotiate public policies.¹⁸ This role was taken over by Romani NGOs, although of course in the process of negotiating they had to rely on extrinsic factors. The latter role was played by several international institutions and Western governments, and since the mid-1990s, it became clear that the efforts should focus at one name and address—the European Commission, Brussels, as the EU accession became the main political goal of successive Bulgarian governments. Weak as it has been on human rights in general, arbitrary in monitoring commitments and oblique in expressing itself on implementation, the EU was the political factor able to make the Bulgarian government commit to Roma integration. And this became clear to the Romani civil society early enough that it could make use of it.

The Human Rights Project (HRP) was in the 1990s one of the strongest and most outspoken NGOs, and became a hub for the formulation of Romani civil society policies. These found first expression in the Framework Program for Equal Integration of Roma in Bulgarian Society (the Framework Program), a document which was drafted by Romani and non-Romani experts and endorsed by 75 Romani NGOs from all over the country. Both the drafting and the process of soliciting Romani activists' support was conceived, organized and logistically supported by the staff of the HRP.¹⁹

The Framework Program's main message was recognition and combating of discrimination against Roma in all spheres of social life. It proposed measures in eight spheres:

- Legal measures to combat discrimination
- Employment and economic development
- Access to healthcare and sanitation
- Housing and neighborhood regulation
- Education

¹⁸ Interview of Rumyan Russinov in this volume.

¹⁹ In May 2010 the government adopted a new "Framework Program for Integration of Roma in Bulgarian Society," which replaced the Framework Program. Although in general the latter reiterates most of the commitments of the Framework Program, its language is more evasive, less categorical and allows for compromises, especially on de-segregation. In some spheres, e.g. on combating racism in the classroom and on housing the new program is a step backward compared to the commitments of the Framework Program.

- Protection of Roma culture
- Roma presence in the media
- Combating discrimination against Roma women

In the sphere of education, the Framework Program envisaged a series of measures dealing with the most serious problems. These measures include:

- *Desegregation of Roma schools.* The Framework Program envisaged “a long-term strategy for the full abolition of segregated schools in the Roma neighborhoods,” as well as the abolition of segregated Roma classrooms in mainstream schools. In the context of this long-term vision, the program endorsed introduction of pre-school education for Roma children who do not speak Bulgarian, Roma teaching assistants, and targeted social assistance for poor families.
- *Abandonment of the current practice of tracking normal-developing Roma children into special remedial schools and programs.* The Framework Program viewed the practice of transforming Roma culture and social deprivation into mental retardation as “profoundly discriminatory” and called for its prompt abolition.
- *Combating racism in the classroom* through effective and dissuasive punishment of such acts and through sponsorship of ethnic tolerance programs for teachers.
- *Ensuring of the possibility of Romani students to study Romanes as their mother tongue at school.* The Framework Program demanded that the government take measures to organize this in a systematic way through its introduction into the obligatory elective curriculum and by financing the preparation of teachers for the subject at universities.
- *Endorsing university education for Roma* through the organization of preparatory courses for Roma high school graduates.
- *Support of continuing education and vocational training for Roma adults.*

The negotiations with the government about adopting the Framework Program was hard. It was particularly difficult for the government to recognize that Roma were discriminated against. On a number of occasions, the government denied that such discrimination actually existed. At one point in January 1998, the Legislative Council of the Ministry of Justice

issued an opinion that its recognition and the adoption of measures to combat it would be unconstitutional. The government also tried to propose until the very last moment its own version of a weaker program, and kept pushing for editorial changes that would have emasculated the program.²⁰ Ultimately, on April 22, 1999 the Council of Ministers adopted a version that was very close to the original draft approved by the Roma organizations.

The government's stubbornness during negotiations and its subsequent reluctance to implement the Framework Program was based on its unwillingness to recognize any discrimination against Roma and on its understanding of possible resistance to the proposed measures among the majority of Bulgaria's population. The latter's negative public attitudes towards the Roma affected also measures in the realm of education. According to several surveys of inter-ethnic attitudes based on representative samples of the major ethnic groups the level of negative ethnic prejudices and social distances of the Bulgarians towards Roma were quite high. Attitudes towards integrated education of Roma did not make an exception. In a 2005 survey, 27 percent of Bulgarian respondents answered "no" to the question of whether they would be opposed to having a few Roma in their child's classroom. Also, 77 percent answered "no" to the question of whether they would be opposed to having one-half of the classroom being of Roma students. When asked whether they would mind if more than one half of the children in their child's classroom were Roma 86 percent answered "no". This survey also indicated that if the share of the Roma students in the classroom was to go above 10 percent, the Bulgarian parents were prepared to withdraw their child from the school, and 73 percent of Bulgarian respondents would not agree to have a Romani teacher of their child.²¹ These very high levels of negative attitudes exhibited no positive dynamic throughout the period of democratic change.²² In addition to influencing the government's lack of enthusiasm to implement Roma integration policies, they also reflected on the attitudes of institutions and civil society at the local level where non-governmental projects of educational integration of Roma were to be implemented.

²⁰ OSI/EUMAP, *Monitoring the EU Accession Process: Minority Protection*, vol. I, 77–78.

²¹ Bulgarian Helsinki Committee, *Pet godini no-kusno*, 44, 51.

²² OSI/EUMAP, *Equal Access to Quality Education for Roma*, vol. I, 120.

Government Policies on Desegregation

The government approach to desegregation after the adoption of the Framework Program was mostly paperwork for external consumption with very little incentive to implement any measures as a follow up. With regard to tracking of Roma children to special remedial schools for children with developmental disabilities the government policies were followed by some action.²³ This has been to some extent also the case with the selective targeting of Roma for placement in schools for delinquent children. Successive governments produced several policy documents in which they reiterated the commitments on desegregation from the Framework Program.²⁴ The main ones were:

- The *Guidelines for the Integration of Children and Students from Minorities* of the Ministry of Education from September 2002.
- The *National Strategy for the Prevention and Combating Anti-Social Behavior and Crimes of Minors and Adolescents*, adopted by the government in January 2003.
- The *Action Plan for the Implementation of the Framework Program for Equal Integration of Roma in Bulgarian Society for the Period 2003–2004*, adopted by the government in September 2003.
- The *National Plan for the Integration of Children with Special Educational Needs and/or Chronic Diseases in the National Education System*, adopted by the government in September 2003.
- The *Strategy for Educational Integration of Children and Pupils from Ethnic Minorities* of the Ministry of Education from 2004.
- The *Action Plan for the Decade of Roma Inclusion 2005-2015*, adopted by the government on the eve of the launching of the Decade of Roma Inclusion in February 2005.
- The *Framework Program for Integration of Roma in Bulgarian Society*, adopted by the government in May 2010.

However government commitments on desegregation have never been comprehensive. Most were not followed up by legislative measures, and on several occasions they were overshadowed by initiatives which were in fact harmful to Roma education. The reasons were, again, reluctance to

²³ Interview of Rumyan Russinov in this volume.

²⁴ These documents, adopted up to 2007, were described in detail in: OSI/EUMAP, *Equal Access to Quality Education for Roma*, vol. I, 51–62.

recognize segregation as discrimination, popular resistance to desegregation, and the general disregard of the problems of Roma integration. Desegregation was not even mentioned in one of the major policy documents on education, the *National Program for the Development of School Education and Pre-School Upbringing and Instruction*, adopted by the Parliament in June 2006. Although it envisages a number of measures that are supposed to benefit the system in general, such as the introduction of internal and external evaluation, differential remuneration of teachers depending on their achievement, and decentralization of school management, the National Program is a step back from the commitments to educational integration already undertaken by the government.²⁵

The National Program envisages “optimization of the school network and developing of the system of hub schools,” as well as a system of “delegated budgets,” i.e., direct financing of the schools on the basis of the number of students enrolled, with no possibility for the municipalities to redistribute government funding. This major reform of the financing of the national educational system was adopted and carried out without regard to the need for residential desegregation. As a system it encourages schools to enroll more students in order to get more money directly from the state budget. This has mixed effects on desegregation in the Bulgarian context:

- It brings more money to the segregated schools in the Romani neighborhoods as they usually have many children enrolled. This allows these schools to improve material conditions and infrastructure and to attract more children from the neighborhoods.
- It encourages smaller non-Romani schools to enroll Roma children in order to increase their budgets and to survive. The quality of education in these schools however is worse than in the rest of the non-Romani schools but better than in the segregated schools.
- It leads to closing down of many small village schools, which are mostly Roma and—at least in theory—leads to the transfer of students to “hub schools,” where the quality of education is usually better, but which are not necessarily mixed.

²⁵ Ibid., 54. After the adoption of the National Program the official expressions of commitments to desegregation decreased. The *Action Plan for Implementing the Framework Program for Equal Integration of Roma in Bulgarian Society* of June 2006 too does not mention desegregation. This is probably due to the fact that the EC monitoring of Roma integration de facto ceased with the clear prospect of Bulgaria’s joining the EU as of January 2007. Roma integration did not become part of the post-accession monitoring.

The reform resulted in practice in closing down of many small village schools. This had a profound negative impact on school enrollment of Roma children, many of whom did not enroll in the “hub schools” and dropped out of the national educational system. Cutting of social assistance to poor families with the 2006 amendments to the Social Assistance Act also had a negative impact on enrollment.²⁶ Thus the overall net enrollment rate for elementary school level in Bulgaria for 2008 fell to 94.6 percent, down from almost 100 percent several years before, which means that almost 15,000 children, mostly Roma, were not enrolled already at this educational level.²⁷

Another unfortunate development was the poor funding of residential desegregation. In 2004, the then government proposed a draft law for the establishment of a special fund for educational integration of students from ethnic minorities. However, in October 2004, the draft law was defeated after its first reading in the Parliament, in the face of populist and even racist arguments. In response, the government established the fund by a decree several months later, but it didn’t work for more than two years, and only started supporting projects in October 2007. During its first year it offered only €281,190 for integrated education, mostly to kindergartens. The projects which got funding were small-scale operations without clear goals and relationships to residential desegregation.²⁸ Some non-governmental desegregation projects received funding from the Operational Program Human Resources Development, co-funded by EU Structural Funds and the government. In 2008, four of these projects received financial support from this program totalling €167,000. This funding supported additional activities of the projects, such as extra pedagogical work with Roma children and extracurricular activities. No official evaluation of these projects has been made public so far.

Since 2000, NGOs started to implement desegregation projects in several Bulgarian cities by enrolling Romani students from Roma neighborhoods into ethnically mixed classes at mainstream schools. At the same time the projects implemented a number of activities to support the students involved in them: additional educational support, teacher training, cultural activities, and social assistance to the poor families. Non-governmental

²⁶ For more information on this reform, which the European Committee of Social Rights found to be in violation of the European Social Charter, see: *ERRC v. Bulgaria*, Complaint No. 48/2008, decision on the merits of February 18, 2009.

²⁷ Kolev et al., *Godishen доклад "Romskata integratsia v Bŭlgaria" 2007–2008 g.*, 44.

²⁸ Bulgarian Helsinki Committee, *On the Road to Maturity*, 17.

desegregation efforts were facilitated initially by the general decrease of the number of children in Bulgaria due to the demographic crisis.²⁹ The projects' core funding came from the OSI's Roma Participation program and later by the Roma Education Fund. The process started in Vidin and subsequently expanded in other cities. For the 2006–2007 school year the number of children involved in the projects was 2,204, a figure which later stabilized at around 2,500. In essence, the projects were implementing policies, which were supposed to be implemented by the government and the local authorities as provided for by the respective commitments on residential desegregation, at no cost for them. Yet, their support was far from unequivocal, especially at the initial stage. Both regional inspectorates of education and local authorities in several cities where non-governmental projects operated obstructed the process.³⁰ The situation improved somewhat subsequently but tensions were felt also at the later stages.³¹

The government's efforts in dealing with the overrepresentation of Roma in special remedial schools and in schools for children with behavioral challenges were more focused and more effective. Both types of institutions saw a decrease in the number of children placed in them, especially after the 2004–2005 school year (see Graphs 1 and 2 on page 161 and 162). This was due to changes in the legislative framework regulating placement in these schools, which managed in both cases to establish stricter criteria for placement and, in the case of the schools for delinquent children, more effective judicial control. Yet both types of institutions continue to allow for arbitrariness and overrepresentation of children from ethnic minorities. Despite a significant reduction in the number of schools and the number of children enrolled in them, further reforms are needed, which would ultimately raise the question of the very need for such institutions in the modern systems of remedial education and social control of juvenile delinquent behavior.

Legislation, Jurisprudence and Remedies

The Constitution, the *National Education Act* and the *Protection against Discrimination Act* (PADA) all provide for general protection against racial and ethnic discrimination, as well as against discrimination in the

²⁹ Interview with Rumyan Russinov in this volume.

³⁰ Kanev, *The First Steps*, 2003.

³¹ BHC, *On the Road to Maturity*, 44, 115.

realm of education.³² Article 5, para. 4 of the Constitution provides that the norms of the ratified international treaties are part of the national legislation and have a primacy over any conflicting provision of the domestic legislation. PADA specifically protects against racial segregation, which is defined as “the issuing of an act, the performing of an action or omission, which leads to compulsory separation, differentiation or dissociation of persons based on their race, ethnicity or skin colour.” Several provisions of PADA oblige the Minister of Education, local self-government bodies, and the heads of the educational institutions to ensure the effective protection against discrimination in the system of education. The Bulgarian system for protection against discrimination allows the aggrieved parties to file complaints against discrimination before a special quasi-judicial equality body, the Protection against Discrimination Commission, before the courts of general jurisdiction and before the administrative authorities. These can offer a number of remedies, such as repealing discriminatory acts, restoration of the *status quo ante*, ordering of certain measures, and recommending courses of action and compensation of the victims.

Anti-discrimination legislation has not been widely used to combat racial segregation of Roma in Bulgaria.³³ There are several reasons for this. Perhaps the most important is the lack of tradition and practice to challenge so serious and systematic social problems through the judicial system in Eastern Europe. The government of Bulgaria is reluctant to execute even the judgments of the European Court of Human Rights, especially those involving Roma victims.³⁴ PADA and the procedures for protection it establishes are not widely known in the Roma community and both the general system of legal aid, as well as the one in the field of anti-discrimination is too narrow and too restrictive.

In addition, PADA’s definition of racial segregation is somewhat narrow in that it allows the enforcement bodies to look at “compulsion” in cases of racial segregation without taking into account circumstantial and environmental factors.³⁵ On several occasions courts in Bulgaria also

³² OSI/EUMAP, *Equal Access to Quality Education for Roma*, vol. I, 79–82.

³³ Interview with Rumyan Russinov in this volume.

³⁴ For more details see Kanev, “Influences and Developments in Bulgaria Resulting from the Application of the ECHR.”

³⁵ Ilieva, *Praktika na grazhdanskite sudilisha po Zakona za zashita ot diskriminatsia* (Jurisprudence of the Civil Courts on the Protection Against Discrimination Act), 163. The author, who is the Legal Director of the Bulgarian Helsinki Committee, argues for a wider concept of desegregation that, in assessing the existence of a “compulsion,” takes

restricted the meaning of “racial segregation” in order to deny protection against residential segregation in cases brought by Roma under PADA. One of these cases concerned segregation of Romani students in one of the schools in Sofia, which offered poor quality education in bad conditions. At the first instance, in July 2005, the Sofia District Court ruled that there had been discrimination because enrollment of the Roma students in that school, although formally with the parents’ consent, was in fact against their will because the latter was determined by “external circumstances”—establishment of the school in the Roma neighborhood, difficulties in enrollment in other schools and negative attitudes of the non-Roma students. Thus, the court found both segregation and a violation of the Roma students’ right to education.³⁶ This decision however was reversed on appeal by the Sofia City Court, which ruled that external circumstances do not amount to compulsion and that therefore there had been no segregation. The court found only a violation of the students’ right to education because of its poor quality.³⁷ The latter however was not linked to the fact that it was a segregated school. In several other cases courts followed this restrictive approach requiring clear and direct evidence of “compulsion” and leaving intact *de facto* residential segregation. The Ihtiman District Court opened that in order to establish compulsion as an element of segregation the plaintiff must show “[f]orce, threat and abuse of authority”³⁸ In a similar way, the Blagoevgrad District Court refused to find segregation because of the lack of direct compulsion, prohibitions or restrictions.³⁹

There have been legal challenges to the system of segregated schooling of children with developmental disabilities. On several occasions the Protection against Discrimination Commission has ruled that children with disabilities have a right to study together with other children. These deci-

into consideration the cumulative effect of a number of environmental factors, such as the distance of the school from home, financial burden on the family associated with the travel to an integrated school, discrimination and physical abuse of the Roma students in the integrated school etc.

³⁶ Sofia District Court, Decision of July 22, 2005, Case No. 11630/2004.

³⁷ Sofia City Court, Decision of February 27, 2007, Case No. 3139/2007.

³⁸ Ihtiman District Court, Decision of May 30, 2005, Case No. 20/2005.

³⁹ Blagoevgrad District Court, Decision of August 16, 2004, Case No. 12/2004. This case concerned the establishment of a school on the premises of a predominantly, but not entirely Romani school, which started enrolling only non-Roma. As a result, the non-Romani students of the old school enrolled in the new one and the old school remained 100 percent Roma.

sions established that integrated education is the rule and that transfer to special schools is only allowed when all other options for integrated education have been exhausted.⁴⁰ These cases however did not involve overrepresentation of Romani students in such schools.

Conclusion and Prospects

While on paper both the successive governments since the mid-1990s and the representatives of the Roma community looked unanimous on the need for desegregation of Romani education, in practice the process did not make serious progress as far as residential segregation is concerned. This was due to the government reluctance to legislate, to establish appropriate administrative framework, and to commit sufficient financial resources in order to achieve significant change. Since EU accession was the major factor that made the authorities commit to desegregation, after Bulgaria joined the EU this external pressure seized to exist and, consequently, the governments quickly stopped paying even a lip service to desegregation.

At present, there does not seem to exist a serious internal political or other resource to influence the necessary changes in educational integration of Roma. Brussels continues to be the major hope. So far, however, the EU has not taken seriously the human rights of the Roma in general, and discrimination in education in particular. Pre-accession monitoring was superficial, and the ensuing dialogue with the Bulgarian authorities failed to produce the profound change needed.

One day the EU will have to face its most serious human rights problem and demand appropriate measures for its adequate resolution at both local and European level. It is hard to see how European societies can develop in freedom and prosperity with enclaves of poverty, discrimination, and neglect in their midst. With the Roma problem becoming more and more European, there are more and more people and institutions realizing and recognizing its depth and breadth. The sooner this understanding reaches all corners of the European societies, the better the prospects for equal integration of Roma in them.

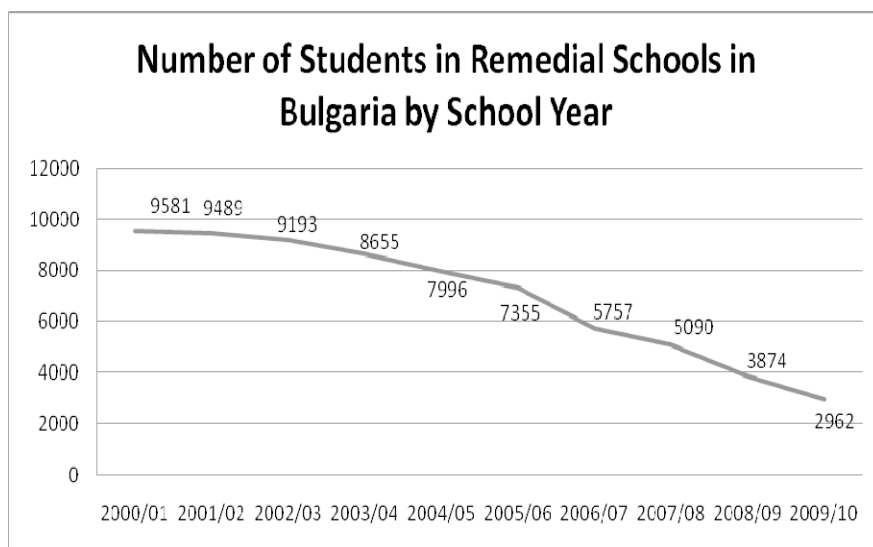
⁴⁰ See Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2009, Annual Report, March 2010, available at: <http://www.bghelsinki.org/upload/resources/Human-Rights-in-Bulgaria-en-2009.pdf>.

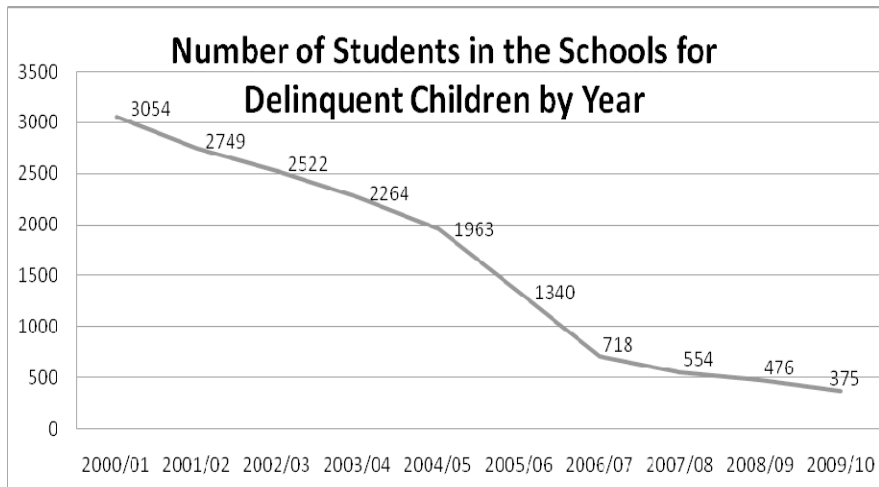
Appendix:

Table 1
Estimates of the share of Roma students attending segregated neighborhood schools

<i>Source of estimate</i>	<i>Year of estimate</i>	<i>Estimated share of Roma students attending segregated neighborhood schools in per cent of all Romani students</i>
National Council of Ethnic and Demographic Issues/ European Roma Rights Center	2003/2005	70
United Nations Development Program	2002	49
International Center for Minority Studies	2003	54.9 - Christian Roma 44.5 - Muslim Roma
Ministry of Education	2005	50 (towns only)

Graph 1



Graph 2

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Interview with Ivan Vesely from the Czech Republic

Ivan Vesely is a founder of Dzeno Foundation in Prague and the director of Radio Rota. He is a former army officer persecuted by the communists and rehabilitated after 1989. He is a regular contributor to the magazine Amaro gendalos as well as to Czech daily newspapers. He has spoken widely against segregation of Roma in the Czech Republic.

The interviewer was Iulius Rostas.

Question: Let's start with the education of Roma during communism. What was the education of Roma like then?

Ivan Vesely: It was quite simple. If we take, for example, Slovakia, the place where I used to live, we went to school together normally with non-Roma. There was almost no segregation there until the seventh grade. After that, Romani children were segregated into special classes which were called Integrational Roma Classes. The official purpose of having such classes was to prepare children for their future work, for example, in forestry. Most of the Romani children were directed after the seventh grade to vocational schools. However, in the case of those Romani children whose grades were average or above-average, they could continue their education in high schools that were not segregated. While in the Czech Republic of Czechoslovakia some tests were carried out on Romani students to determine their school registration, in the Slovak Republic of Czechoslovakia the situation was slightly different—no such tests were made.

Q: What were the reasons for separating the Romani children after the seventh grade?

I.V.: The official explanation was that “special education” was meant to serve as preparation for their further education and work. This was how they prepared Romani people for integration into the socialist economy.

Q: Did Romani children manage to continue their education?

I.V.: Yes. School authorities tried to push them toward vocational training to prepare them mainly for work in the construction industry. While it was just an elementary and then a secondary level of education, Romani people finally received some education and had a chance to enter the labor market. The special schools prepared them to be successful up to that level. They became skilled laborers and occupied a niche in the socialist economy. But few Roma managed to continue their studies or get better jobs. When communism fell, the Roma that held positions as skilled or unskilled workers became the first to lose their jobs, as they were not competitive in the new economy.

Q: What were the main issues, or problems, as regards Roma in the area of education under communism?

I.V.: In those days it was primarily the issue of attendance, and second, the language. Children and teachers had problems understanding one another. The test I mentioned earlier assessed cultural issues; many Romani children came from poor, marginalized families, and because of their different experiences, they did not understand many things on the test. It was a major mistake of the communist regime that based on the results of those tests, Romani children were classified with mental disabilities.

Q: Where there any measures—programs or projects—that targeted Roma under communism?

I.V.: First, there was the official policy of the Communist Party, its ideology. The communist regime emphasized the idea of social integration. Class was what defined people, not ethnicity. Everyone had to have a job, work was a duty, and if you had a problem with working, it was supposed to be solved by the social department of the city government or the local council. Certain programs were run by municipal councils. These programs were for poor people, not for Roma.

Q: How did the educational system during communism manage the cultural differences and issues related to ethnic identity?

I.V.: Issues of cultural and ethnic identity were not dealt with during the communist regime, because in those days Roma were not considered a national minority. They were handled as a social group, in fact, a so-called socio-pathological group. This definition of the Roma reflected how the Communist Party saw the Romani people, as a socio-pathological group which needs to be assimilated. This was the official policy of the Communist Party.

Q: Was there a document on this?

I.V.: Yes, several declarations were made by the Central Committee of the Communist Party about “people who have problems with normal stan-

dards of living.” Their thoughts were based on the Marxist-Leninist ideological perception of ethnic and national minorities.

Q: Did the Communist Party have a Roma program?

I.V.: No, there was no special program for Roma, There was a program, or rather a policy, for the “socio-pathological groups” which included not only Roma, but non-Roma as well.

Q: What were the main changes after the fall of communism with respect to Roma education?

I.V.: After the Velvet Revolution there were no significant changes. The new political arrangement followed the same concept of “special schools,” and for Roma the education there was the same. The only difference was that after 1989, Roma were recognized as a national minority.

Q: Was the new circumstance that Roma were recognized as a minority reflected in the school curricula, for instance, in having subjects like the Romani language or Romani history?

I.V.: In the first few years after the political transformation, school textbooks did not mention Roma or include cultural and historical information about them, with the exception of some information as part of the subject of nationalities. In 1991, Milena Hubschmannová initiated the opening of a Romany studies department at Charles University, which she chaired until her death. The department offered the first undergraduate university course specifically devoted to Romany studies anywhere in the world in the early 1990s.

Q: You were one of the persons close to the leadership after the fall of communism. How did the new leadership of the country after ‘89 deal with Romani identity and Roma-related issues, including education?

I.V.: I remember when the Roma political party started working on the issues of education, cultural rights, and the Roma emancipation process. The most important issues on the country’s agenda were not related to the Roma, but to the general political situation. The Roma Civic Initiative had one MP in the parliament of Czechoslovakia. At that time, the main political issue was the break-up of Czechoslovakia as well as many other things, such as establishing a democratic system, the economic transition, etc. In that chaos, the Roma political party did not lobby for Roma related issues and failed to push forward many important laws for adoption. It was a big strategic mistake of the Romani political movement in those times not to put Roma-related issues on the public agenda.

Q: How did the break-up of Czechoslovakia in 1993 affect Roma?

I.V.: The break-up of Czechoslovakia entailed a significant problem for us Roma, because the majority of us lived in the eastern part of Slova-

kia. The Romani movement was strong in Slovakia in terms of numbers and action, but not in the Czech Republic. While in the Czech Republic there were twice as many voters as in the Slovak Republic. This unity was lost when Czechoslovakia broke up. We lost influence on the political scene.

Q: The Czech Republic at that time was very much criticized for its law on citizenship, because many Roma were somehow excluded as a result of the provisions of this law. How did that affect Romani children's access to education?

I.V.: In my view, that law did not have much influence on the issue of education, because children, by law, had to go to school. Their education was free regardless of whether they were citizens or not. Even their material situation was not directly affected by that law, because those Roma who found themselves without any citizenship already had other relevant identification documents which were sufficient for the purposes of employment.

Q: Were there Romani families who were sent back to Slovakia?

I.V.: Not really. The authorities threatened some Roma families with expulsion, especially those perceived as "having a criminal past," but Roma activists and human rights groups mobilized, and in spite of a few deportations, those deported were able to return. The law affected mainly those Roma who travelled for seasonal work from Slovakia to the Czech Republic. Most families had members in both countries, so those potentially affected by this law were those engaged in seasonal work, somewhere between 10–15,000 people.

Q: Back to the issue of education, how do you think Roma perceived education during the transition?

I.V.: The younger generation understood and understands that education is valuable and tried and are trying to acquire a secondary education and to go to university. Nowadays, education involves financial implications. One needs money to go to university, there are costs associated with education. What had a large impact on Roma access to higher education was the scholarship program of the Open Society Institute, which targeted Roma. However, a larger change in the perception of Roma as regards education and its significance has yet to occur.

Q: How did segregation become an issue in the Czech Republic? Do you remember when segregation of Romani children from non-Romani peers was first raised as an issue?

I.V.: Discussions about segregation date as far back as the communist regime. The policy of segregation started with the establishment of special schools back in the 1950s, and this policy was continued after the political

transition, despite its apparent outcome—people with low-quality educations and low prospects in life. If the governments had been thinking strategically, they would have recognized the public interest in regard to education for all, because educated people produce value for the economy and pay taxes, just to take the practical side of the argument. We have many politicians, but we don't have managers. A good manager would have seen these issues and taken measures to improve the situation—not just for the Roma, but for society in general.

Q: Who were the first to raise the issue of segregation in the Czech Republic?

I.V.: I remember the beginning—it was the Roma Movement in 1992 after the fall of communism. I don't remember who exactly raised this issue first, which organisation. At the very beginning they didn't speak about segregation, this word was not used. They spoke about the issue of children classified as having mental disabilities, but this issue was not presented as segregation at the time. Serious action with respect to this issue was carried out for the first time by the European Roma Rights Centre in the Ostrava case, which was presented to the Czech Constitutional Court and later taken to the European Court of Human Rights in Strasbourg. That was in 1999, but before that, there were many public discussions and debates about why Romani children are segregated.

Q: Was the European Roma Rights Center the first to use the word segregation in its action?

I.V.: Yes, exactly. ERRC described the placement of Romani children in special schools as segregation in the Ostrava case.

Q: What was the reaction of the Romani movement and the political circles in the Czech Republic to the use of the word segregation?

I.V.: Many people did not understand what segregation meant, because segregation as an idea was associated with countries like the United States and South Africa. It somewhat reminded people of the civil rights movement of the African-Americans, but they did not understand clearly what segregation meant or what its consequences were.

Q: With respect to the Ostrava case, in 2006 the European Court of Human Rights (ECtHR) ruled in the first instance that there was no segregation. This was appealed in 2007, and in 2007 the Grand Chamber of the ECtHR ruled that segregation of Romani children amounted to discrimination. How was the ECtHR judgment received in the Czech Republic by the authorities, by the Romani organizations, and by other human rights groups?

I.V.: The authorities saw the first judgment of the ECtHR as normal and there were no debates about it. The Government and authorities were not very happy with the second judgment. They tried to formulate arguments to defend their position because they disagreed with the final judgment. They also did not see the relevance of the judgment, as the law on education had been changed in the meantime and the “special schools” had supposedly disappeared. The children who brought the complaint were no longer in school, and this all rather seemed an issue of the past. As for Romani organizations, they tried to put pressure on the government to desegregate the school system, but without much impact. The European Roma Rights Centre set up a coalition of Roma and non-Roma NGOs that has negotiated with the government, but they have not been very successful to date. Some of the organizations in the coalition preferred to talk about “vulnerable groups,” while others saw the issue as a specifically Roma one.

Q: Do you think average people in the Czech Republic heard about the fact that the Czech Republic was penalized by the ECtHR for segregating Romani children?

I.V.: Not many, if any. There was a really poor communication strategy, and that is a weak point of ERRC strategy; if people don’t read about this in the newspapers, if they don’t see programs about it on television, they simply don’t know about the issue.

Q: In 2000, the Czech government adopted the first concept of Roma integration. Did it contain anything about segregation of Romani children?

I.V.: It did. It contained a proposal for better education. It was a program called Stipendia.

Q: The latest concept of Roma integration was adopted in 2009. Is there anything about the segregation of Roma in it?

I.V.: No, the last concept has nothing about the segregation of Roma. It was drafted by the Inter-ministerial Commission for Roma Community Affairs. They put an emphasis, among other things, on housing, secondary education, culture, and on the paradigm of the new policy. However, this concept is not really a strategy. It does not say “we have a problem in the system of education and here is a proposal for solving it, including a budget.” The current applicable Concept, “Koncepte romske integrace pro období 2010–2013” (Roma Integration concept for the 2010–2013 period) makes one reference to segregation by saying that it negatively impacts society as a whole. In fact, we have many documents issued by the government, by international organizations, by the European Commission,

which contain ideas, but the implementation of any of these ideas costs money which is frequently not available. For example, we have a Government Concept for Roma Integration 2010–2013, we have the Decade National Action Plans, we have a Joint Inclusion Memorandum, but these have failed to produce visible results in Roma communities.

Q: The European Commission might say it gives money to the Czech Government, and it is the responsibility of that government to further allocate this money for Roma.

I.V.: Yes, that is true. Still, if you go to the Government of the Czech Republic, they say they don't have the money, and if you go to the European Commission, they say, "we gave the money to the Czech Government." This is a bureaucratic circle that confuses people. The procedures for accessing EU money are so complex that one has to focus all of one's energy on getting through them. There is no energy left to reflect on how to improve the situation of Roma on the ground.

Q: Why do you think the government does not invest money in desegregation?

I.V.: There are many reasons why. In difficult times, for example during an economic crisis, some social groups will always be vulnerable to exploitation. Roma are good scapegoats in times of crisis. Besides this, support for the Roma is not a popular topic that will bring votes.

Q: Earlier in this interview you said that it is good for the state to have educated people because then they can be put to work, to produce, to pay taxes.

I.V.: With respect to the Roma, for some reason, politicians do not think strategically. Instead, they only look four years ahead to the next elections, and the effort to improve the situation of the Roma minority does not fit into this timeframe. I believe that if things don't change, the next generation of Roma, the young generation, may become more nationalistic, more extreme in their actions. They may feel that extremism is the only effective way to fight discrimination. For comparison, under communism a narrow circle of Roma received good educations. We developed networks, we socialized and are friends with non-Roma, and we are a kind of assimilated or integrated Roma. We made it through the system and we are successful people. The young generation, however, is being exposed to another experience. They are looking for some kind of freedom outside of the system, because it leads them to the dead-end of ghetto culture, where the risks of becoming criminals, getting involved with drugs and prostitution, etc. are very high. They lack the opportunities to become successful in today's society.

Q: So you are saying that what seems to prevail is the type of politics which says, “we don’t care! Let the Roma stay in their ghetto, we don’t have to deal with them. We leave them in their ghetto and we would rather have two isolated, separated societies.”

I.V.: Yes, unfortunately. For the past twenty years we have been urging a policy of integration, but we have achieved very little progress. Many of those young Roma who are now in their 20s are becoming radical.

Q: Why?

I.V.: Because life is radical for them. This generation comes from extremely poor conditions. During communism, we did not have really extremely poor conditions. We had something to eat, at least, and there was relative safety on the streets. These people today are unable to satisfy their elementary needs, so they become more radical as they fight for survival.

Q: Do you think segregation was more pervasive under communism than it is now?

I.V.: I think it is more pervasive and more visible now. During communism it was less visible—perhaps because nobody talked about it. However, the social system was more open to Roma under communism than it is now. For Roma, the current system is more closed, and this results in the exclusion of Roma from education. It results in segregation.

Q: Are there any politicians, especially after communism, who have spoken out about the issue of segregation of Roma in their speeches?

I.V.: Nobody, nobody. It is not a topic, not an interesting topic. Not even during electoral campaigns. Politicians speak about Roma as people who live on social benefits, but they do not speak about segregation. They lack a long-term vision for a better society. Politicians perceive that opening up a debate on Roma issues risks alienating their supporters.

Q: Roma were not a hot issue in 1977, but still, the leaders of Charter 77 included certain points in their program for Roma. Why do you think now no political leaders talk about Roma?

I.V.: On the pragmatic side, we need to fully understand non-Romani politics and non-Romani thinking. If we don’t, we have no chance.

Q: Are Roma so dependent on Gadze politics and thinking? Why not have Romani politics and thinking?

I.V.: In the political game, we have no other choice but to play according to their rules. Are we to blame because we are not able to put our own rules in place? We have been working on this for the past twenty years, we have been attending conferences, seminars, we have been listening to various people, but we have not been able to emphasize our position and

needs enough, to articulate them, to live according to our rules. Those who possess the power don't play a fair game. We have put a number of requests on the table, we have arranged meetings with politicians, with the president, with the prime minister, and they say, "yes, this is a problem, but we do not have the money." This is a cheap game. They lack commitment, and we lack power.

Q: Do politicians say "we are open to work with Roma, but they do not have the capacity to bring plans for solutions, for that reason we prefer to work with non-Romani organizations"?

I.V.: In the Czech Republic the Roma do have the capacity to come up with plans, with solutions, with predictions. However, many Czech politicians still think the way their predecessors did in the 19th century. We are in the 21st century now, there is a relatively strong Romani movement, the Roma have made claims, including political ones, like, for example, autonomy for Roma. Autonomy is the way to independence. Just take the situation in Northern Bohemia. In 20–50 years, due to demographic factors, that geographic region may become a Romani state.

Q: Do you think that could be a solution?

I.V.: Yes, I believe that in about thirty years there will be some kind of autonomy for Roma within the framework of the EU. Then we can deal with our own issues.

Q: Why is the segregation of Romani children not dealt with by Romani organizations as a hot topic?

I.V.: One reason is that Roma people don't understand the seriousness of this issue and what segregation is. When they push us to integrate with non-Roma, these organizations from Western Europe and the United States that have been trying to provide help with this are coming from a different perception of education. Those organizations are not working with Roma activists either to mobilize Roma communities. Here I am speaking about the Roma from the post-communist countries, not from the Western countries. In this part of Europe, the situation is totally different. There is still a strong connection with the Romani traditions.

Internationally, the Romani movement is too weak. We have so far been unable to represent the interests of the Roma well enough. We have not been able to exert sufficient pressure. Instead, we have held polite conversations and consultations.

Q: One group of stakeholders in the segregation cases are always Romani parents, who also need to be convinced.

I.V.: I agree with you, because all changes start with the Romani family. If you compare a traditional Romani family with one that has aban-

doned its traditions, you will see that traditional families don't have serious problems in life, while if you go to an assimilated or integrated family, they are the ones with the serious problems, social, moral, and many others. Traditional Romani families normally don't have these problems. Why? Because they have established some rules for life which guide them, the *Romanipen*. The majority of Romani families in the Czech Republic, however, are disconnected from their roots. They have forgotten the Romani language, they have forgotten their traditions, they have forgotten how to behave according to *Romanipen*. Instead they have social, education-related and housing-related problems. Some of them are involved in prostitution, gambling, drugs. This is the outcome of the communist regime's effort to push them to integrate, to assimilate. This is the responsibility of the state now, to deal with the issues these people are facing.

Q: Why didn't the Romani community organize and set up its own schools like other minorities did so that the Romani language would be the language of instruction and *Romanipen* could be transmitted to the next generations?

I.V.: That's an interesting point. I think we must use other instruments to empower these people, but we haven't got them, we haven't got the influence to produce this kind of social change. For this we need money, and we don't have money. We have two possibilities: we either ask for financial support from donors, or international organizations put pressure on the government to allocate financial resources from the state budget. For twenty years we have been in this Catch-22, and I don't see a way out.

Q: You are an educated Roma. You had access to the political leadership after 1989. You were a public figure and could have mobilized the Roma. Why did this not happen?

I.V.: I lost many efforts because I did not have enough supporters. I was the leader of an army that was not large enough. I would have needed a large army for that. I had access, but not enough force behind me. I was looking for people who really believed in the idea of a Romani nation. I am again thinking about a new strategy, and I intend to speak to people about how to create social change. We have to reach agreement on several issues, because the situation will only change if we do it ourselves.

Q: Is education a way to make strong Roma soldiers for such an army? Like, for example, if you know your rights, you are most likely to also fight for your rights.

I.V.: I agree with you, education, particularly a good education, is one of the instruments for building such an army. Education is an instrument

for empowerment. However, we do not have to forget our values or ignore our identity in order to receive a good education. One can be an educated person and also respect Roma traditions. We don't have to become Gadze to get educated.

Q: What do you think the government should do in order for Roma to receive a good education?

I.V.: The government is letting us down and will always do so, not only with respect to us, the Roma, but it will always let down the poor and the marginalized. The notion that governments try to take care of poor people is pure idealism. The Roma have to come up with their own solutions, and these solutions should take into account our traditions, language, and way of life.

Q: So basically the poor, the weak are the losers in our society?

I.V.: Yes. What is more, non-Roma politicians often use the money designated for Roma programs for their personal political goals. They have enacted programs for Roma, but in reality the situation is different. We receive many promises, but what we don't have is implementation, strong political will for the implementation of these programs. Until political will is generated, the poor will be always the losers.

Q: You are saying that these politicians are not accountable to Roma and that they only make promises? What can we do to make them accountable?

I.V.: We must get organized and put pressure on them. We must become strong, and do the other things we discussed many years ago. This is the essence of Roma mobilization, and we will keep speaking about Roma mobilization for years to come.

Q: What is the government doing now, if anything, to desegregate the schools?

I.V.: They are not doing anything except producing nice-sounding papers, resolutions, and plans. They changed the name used to identify "special schools," and they think that therefore they have solved the problem of segregation.

Q: Unlike many years ago, when the ERRC started the process of desegregation through litigation, there is now an anti-discrimination law in the Czech Republic. Is that a solution? How can we use that to promote desegregation?

I.V.: The anti-discrimination law, unfortunately, doesn't work, even for non-Roma who are discriminated against, so how will it work for Roma? The sentiment toward anti-discrimination is unfavorable in Czech society. Neither the politicians, nor the courts, nor local governments have

generated the political will necessary to implement the anti-discrimination law. It is a good instrument, and we will have the chance to use it, to file complaints with the ombudsman—but for the moment, the anti-discrimination law is not a strong instrument in this country.

Q: In the U.S., there was the *Brown* case in 1954, and it took many more years to desegregate the schools. Do you think the *DH* case can be like the *Brown* case was in the U.S.?

I.V.: The culture in the U.S. is totally different from the culture of the Czech Republic. In the Czech Republic, the historical heritage is totally different and the perception of such issues is also totally different. Americans have a totally different educational system. Americans know what freedom is and they respect it, they respect many things which do not work here, and their behavior is different in many areas. According to the U.S. Declaration of Independence, all people have the right to seek happiness, and this is an important right that Americans respect. Here in the Czech Republic the attitude is totally different, and this society's experience with minorities after the Second World War was totally different as well. About sixty years have passed since then, but this is too little time for a change in the Czech mentality.

Q: Why do you think the government is not willing to implement a desegregation policy?

I.V.: Because they do not think strategically about economic development in this country. That's the Catch-22: this is about political will, implementation, and sentiment in society.

Q: It is still encouraging that international organizations put pressure on the government to do something. The Council of Europe, the European Commission, the OCSE—all of them condemn the practice of segregation.

I.V.: Yes, they put pressure and what happened? Nothing! The government adopted two plans for education in 2010: the National Action Plan for Inclusive Education and the Early Childhood Education Plan. The Bolshevik governments also had plans—but the Bolsheviks allocated money for theirs! This government provides a plan, but no money. I hope the international organizations can do more to put pressure on the government to invest into their own plans.

Q: With the European Commission, if a member state fails to comply or fails to observe certain rules, they may decide not to approve the disbursement of money.

I.V.: I'll wait for that to happen.

Q: What results do you think have been achieved in regard to desegregation so far?

I.V.: The names of the “special schools” has been changed, and the anti-discrimination law we discussed earlier has been adopted. I think this is all that is visible. Of course, compared to 15 years ago, there are more instruments which could be used, but nobody makes use of them.

Q: So what is missing?

I.V.: Players who could and would make use of these instruments and the political will to do so.

Q: What lessons can be learned from desegregation in the Czech Republic?

I.V.: I don’t see many. The government has always tried to avoid or postpone resolving the Roma issue. They have produced good papers, good declarations, but they always get stuck at that level. This should be about people with political will, and we don’t have them in this country. In fact, what the Roma should do is to mobilize political will to make the changes in education come about and to desegregate the educational institutions.

Q: Where do you think we will be in five or ten years?

I.V.: It will be in the same circle, not only in the Czech Republic, but generally in the other post-communist countries.

Q: You sound very pessimistic about this. What if, for example, Hungary, or Romania, or Bulgaria will become so successful in desegregation that, at one moment, the Czech politicians will say: “Let’s do the same for our Roma!”

I.V.: Possibly, yes, but I don’t believe this will happen. The people are not prepared to support such change, nor are the politicians.

Q: So do you think that in ten years’ time there will be more segregation than now?

I.V.: Yes, that is what I foresee.

Education Policies in the Czech Republic

GWENDOLYN ALBERT

In 1997, the de facto existence of ethnic segregation in the Czech school system was brought before the Constitutional Court of the Czech Republic. This segregation was and is the product of a practice by which Roma children are disproportionately educated separately from other children according to a curriculum for the intellectually disabled, irrespective of their actual intellectual capacity. When this practice was first challenged, the government and most of those involved in administering education rejected the argument that this state of affairs constituted either discrimination or segregation. The Constitutional Court itself also found that the constitutional rights of the children involved had not been violated. They in turn appealed to the European Court of Human Rights (ECtHR).

By the time the Czech state was defending itself before the Grand Chamber of the ECtHR, the government was arguing that a new Schools Act (Law No. 561/2004 Coll.), which took effect in 2005, had already addressed the circumstances which gave rise to the case of *D.H. and Others v Czech Republic*. The “special schools” into which Roma children had been disproportionately assigned were said to no longer exist. In 2007, the Court found that the Czech state had indirectly discriminated against the Roma applicants on the basis of their ethnicity with respect to their access to education and required the state to implement effective corrective measures.

The Schools Act is still in effect as of this writing. It does not address the ethnic aspect of this de facto segregation. Rather, it has abolished the use of the term “special school” (*zvláštní škola*), as the schools so named had become stigmatized due to the publicity surrounding the legal challenge to the system. The new law has not affected the process by which Roma children are disproportionately assigned into education for the intellectually disabled, and the practice has been perpetuated for the same rea-

son it became so prevalent when special needs education was first introduced more than forty years ago: The higher per capita subsidies available from the state for the education of intellectually disabled children are an economic motivation for schools to teach a special needs curriculum, even to children without disabilities. Most of the children labeled by the system as in need of this special treatment have been Roma.

A genuine effort to address the issue of ethnic segregation in education recently made it onto the agenda of the government during the time in office of Education Minister Ondřej Liška (from December 2007 until mid-2009). The *D.H.* judgment was announced in November 2007 and acknowledged by the government. Liška was motivated by his personal commitment to human rights, by the *D.H.* judgment, and by the activism of a coalition of domestic and international NGOs called “Together to School” (*Společně do školy*), which seeks an end to the segregation of Roma in the Czech schools.¹ Liška met personally with the NGO coalition and appointed a woman from an NGO background, Klára Laurenčíková, to the position of Deputy Minister in charge of Social Programs in Education, tasking her with implementing the judgment. During his time in office, Liška’s primary accomplishment was to make sure those at the ministry who had designed the practices which had violated Roma children’s access to education would no longer be involved in the further design, implementation or oversight of special needs education in particular. This “house cleaning” has generated a backlash amongst a large contingent of special needs educators and ministry staff who passionately disagree with *D.H.* and its implications.² Liška also initiated the ministry’s first 21st-century attempts to gather data on the ethnic composition of school cohorts and the educational careers of Roma children and laid the groundwork for the establishment of a National Action Plan for Inclusive Education. In mid-2009, a vote of no confidence brought down the cabinet of which he was a member.

Liška’s successor, Minister Miroslava Kopicová, was less committed to the desegregation issue. While she did write to the directors of schools for the intellectually disabled asking them to make sure the children they enrolled were genuinely in need of their services, she also downsized the resources and staff devoted to this issue. Nevertheless, due to the involvement of members of the Together to School coalition in several min-

¹ See www.spolecnedoskoly.cz (Czech only).

² “Schools for special needs say Roma kids’ placement is justified,” *Prague Daily Monitor*, February 12, 2010.

isterial working groups, during Kopicová's time in office amendments were drafted to the specific decrees regulating the provision of special needs education and the operation of the educational-psychological counseling centers responsible for evaluating children's ability. Should these amendments eventually be adopted, they have the potential to result in the reduced assignment of non-disabled children (of any ethnicity) to schools for the disabled. Also on Kopicová's watch, at the instigation of Together to School and in collaboration with its members, the Czech School Inspection Authority (CSI) visited many of the former "special schools" in order to investigate their compliance with the current law.

In March 2010, CSI reported it had found gross negligence in 34 former "special schools," where a minimum of 5,000 children, most of them Roma, had been illegally assigned without sufficient documentation of intellectual disability. The legally required consent of many children's guardians was also missing from the schools' records. The school officials concerned have not only defrauded the state of millions of crowns in subsidies as a result, they have been depriving intellectually healthy children of the opportunity to be educated to their full potential.³ CSI reported that 83 percent of the former "special schools" have not been transformed as the 2004 Schools Act intended. Approximately 35 percent of the children diagnosed with "light mental disability" at these schools are Roma; in some regions, 53 percent of the children so diagnosed are Roma.

Kopicová was succeeded in July 2010 by the current education minister, Josef Dobeš, who has reduced the resources and staff dedicated to this issue even further. Both Dobeš and Kopicová have been subjected to heavy civil society pressure from special education teachers and the architects of the previous system, who have lobbied for the ministry to preserve it and have been spreading rumors that the *D.H.* judgment was somehow politically motivated. Some ministry staff would reportedly like the system to be redesigned such that any children who end up repeating a grade in mainstream education would automatically be sent to what are today called the "practical elementary schools"—a name which reflects the fact that the curriculum for the intellectually disabled focuses less on academic content and more on manual, practical skills. In the fall of 2010, Klára Laurenčíková and Viktor Hartoš publicly resigned from their positions as ministerial advisor and director of the ministry's Special Education and Equal Opportunities Department, respectively. Mr Hartoš, himself a child

³ ROMEA, "Czech 'special schools' taught healthy children as if they were disabled—for the subsidies."

psychiatrist, specifically referred to the *D.H.* judgment and the government's refusal to implement the systemic change necessitated by it as the primary reason for his resignation.⁴

Over the past decade, with the exception of Minister Liška's watch, the Czech government has not made a priority of communicating to the domestic public that discrimination against Roma pupils on the basis of their ethnicity and their de facto segregation into an education that does not serve them is and has been a reality. This may partly be because the indirect discrimination mechanism at work is not exactly "sound bite" material. The legislation that was in effect when the eighteen Roma plaintiffs in *D.H.* experienced their unequal treatment did not refer to Roma or any other minorities; ethnically neutral on its face, it was implemented in such a way as to permit the indirect discrimination of the many Roma improperly assigned to the "special schools."

The new School Act has further complicated these issues by introducing the (ethnocentric) term "socio-cultural disadvantage" to describe one of several types of disadvantage which might necessitate special education measures. The law does not define this term. While the implementing regulations for educating persons with intellectual, mental, or physical disabilities do spell out how schools might address the special needs of children with such disabilities, there are no implementing regulations in place regulating the education of children who are "socio-culturally disadvantaged."

Again, with the exception of Minister Liška's time in office, the current "concept" in use in relation to education for Roma is primarily based on the recognition that Roma school achievement is (not surprisingly) not equivalent to that of the majority society. Much of the official discourse as to why Roma children underachieve blames not the schools which have underserved this community for decades, but Roma parents (who are themselves products of this very system). Since parents consent to their children's enrollment, they have also long been blamed for the disproportionate enrollment of Roma into special needs education in the first place. According to this line of reasoning, Roma parents reportedly do not "value" education; proof of this is said to be their tendency not to send their children to pre-school, as well as their alleged indifference to the high Roma dropout rate.

While the government has recently implemented measures aimed at addressing Roma underachievement (stipends for secondary school stu-

⁴ ROMEA "Czech official quits Education Ministry."

dents, teaching assistants), the current prime minister has also gone out of his way to tell the world that notwithstanding the *D.H.* judgment, discrimination against the Roma is not a factor in the current provision of education.⁵ This same claim is being promoted by a very vocal group of special needs educators who are concerned that the system to which they are so necessary is about to be dismantled.

Segregation of Roma in the Czech schools is particularly insidious because of its indirect nature. James Goldston, Executive Director of the Open Society Justice Initiative and Counsel to the *D.H.* applicants, was quoted by Amnesty International in its 2010 report on this issue: “The segregation at issue in Ostrava is a practice, not a legal mandate. Nowhere does the law command that Roma attend separate schools; this is rather the systematically biased application of a neutral law.”⁶

Unlike the current government, most civil society researchers investigating this issue in the Czech Republic, whether working with domestic or international organizations, understand the status quo does constitute de facto segregation. Those working in the schools are very aware that over the course of the past 20 years, schools throughout the country have become more segregated by ethnicity, not less. More schools (both mainstream and “practical”) are all-Roma now than ever before. In addition to the misdiagnoses of Roma children as disabled, this de facto segregation is also partially due to “white flight.” The phenomenon of non-Roma parents removing their children from schools where the Roma population approaches 30 percent or more is considered commonplace.

In his April 2010 review of the Czech School Inspection Authority’s March 2010 report, the Czech ombudsman found that the intent of the current Schools Act was indeed to “introduce a paradigm ... that would favor education of all children ... in mainstream schools.”⁷ The “Framework Education Program for Elementary Education Modified for Pupils with a Mild Mental Disability” provides for education outside of the mainstream, but the only statutory reason for a child to be educated under this program would be the presence of a disability requiring it. According to the ombudsman, “special, segregated education should thus always be a

⁵ ROMEA “In the Czech Republic we consider.”

⁶ Amnesty International, *Injustice Renamed*, 34.

⁷ “Opinion of the Public Defender of Rights on suspicions of discrimination against pupils and students of Romani origin—findings from a report on the inspection activities of the Czech School Inspectorate at practical primary schools,” April 20, 2010. Translation by Open Society Fund Prague.

last resort option.” The ombudsman also concluded that it was the principals of the schools reviewed by the inspectors (not the children’s guardians or parents) who had erred in assigning these children to the wrong programs, and both the schools and the state are responsible for the current state of affairs. He also found that the disproportionate number of Roma children recommended for education in the “practical” schools without a prior diagnosis of disability as defined by the Schools Act is not only indirect discrimination, but “fundamental misconduct” on the part of the authorities. The fact that one-third of all the children currently labeled by the school system as disabled happen to also be Roma constitutes discrimination and is not justified by any legitimate goal. Despite the ombudsman’s findings, the current government still remains reluctant to recognize the status quo as discriminatory, much less to discuss it in terms of ethnic segregation.

Representative data giving a more or less accurate picture of the current state of this *de facto* segregation have only been gathered and published very recently, and data describing the development over time of the prevalence of *de facto* segregation do not exist. Even though regularly gathered, reliable data disaggregated by ethnicity are essential to the design of effective policy with respect to minorities, the Czech Government has usually been reluctant to gather any data disaggregated by ethnicity.

The lack of such official data is the reason the European Roma Rights Center (ERRC) asked the *Zšvůle práva* organization to conduct first-hand research in six schools in the Czech Republic during 2006 in preparation for the legal arguments before the Grand Chamber. This research indicated that, despite the fact that “special schools” had technically ceased to exist after the enactment of the 2004 Schools Act, there had been no discernible reduction in the school segregation of Roma children.⁸ In September 2008, *Zšvůle práva* and the *Vzájemné soužití* organization conducted further research for the ERRC and the Roma Education Fund

⁸ For more information on previous ERRC research on segregated education of Roma in the Czech Republic see the following ERRC publications: Cahn, C. “A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic” (1999); “Stigmata: Segregated Schooling of Roma in Central and Eastern Europe” (2004); “The Impact of Legislation and Policies on School Segregation of Romani Children” (2007); Centre on Housing Rights and Evictions, ERRC, Peacework Development Fund, *Vzájemné soužití*, “Submission to the United Nations Human Rights Committee concerning implementation of the International Covenant on Civil and Political Rights (ICCPR) in the Czech Republic presented on the occasion of the Committee’s review of the second periodic report of the Czech Republic” (2007).

which showed that even though the Schools Act had been in effect for three years, it was not impacting the discrimination of Roma pupils.⁹ The main impact of the law was to re-name the former “special schools” as “practical” elementary schools, but the two-track educational system persisted and the most painful aspects of the discrimination experienced by Roma children were not being addressed. These aspects include an anti-Roma environment at mainstream elementary schools, Roma parents’ inability to make informed choices regarding their children’s educations, the failure to change the content of the curricula being instructed, and Roma children’s lack of access to pre-school.

It was only under Minister Liška that the Education Ministry partially and temporarily overcame its reluctance to gathering its own ethnically disaggregated data. One study performed for the ministry in 2008 by the NGO People in Need and the GAC Analysis and Consulting firm, “Sociological Research Aimed at the Analysis of the Image and Causes of Segregation of Children, Pupils and Young People from the Socially and Culturally Disadvantaging Environment,” managed to gather data on 1,800 Roma pupils, male and female.¹⁰ Released in March 2009, this research found that almost half of all “practical elementary schools” teaching according to a curriculum for the intellectually disabled were attended by cohorts which were 50 percent Roma or more, and every tenth such school (at a minimum) was attended exclusively by children from the Roma minority. These findings were followed by the May 2009 release of what is the country’s most representative investigation into this topic, a monitoring study performed by the Institute for Information in Education (UIV) in 65 percent of all elementary schools in the country. This study found that approximately 27 percent of all Roma children in the Czech

⁹ Roma Education Fund and European Roma Rights Center, *Persistent Segregation of Roma in the Czech Education System*, Budapest, 2008, available at <http://www.romaeducationfund.hu/publications/studies-and-researches>.

¹⁰ The report does not estimate the total number of Roma pupils in the country for the 2007/2008 school year, but does say the 99 schools in the research group were attended by 28 723 children, of whom about 18 percent were Roma, or 5 052 children total. The data collected, therefore, concerns less than half of them (1 800). Sociological Research Aimed at the Analysis of the Image and Causes of Segregation of Children, Pupils and Young People from the Socially and Culturally Disadvantaging Environment, Ministry of Education, Youth and Sport of the Czech Republic, 18–20, available at http://www.gac.cz/userfiles/File/nase_prace_vystupy/GAC_Research_the_segregation_of_children.pdf?langSEO=cz&parentSEO=documents&midSEO=nase_prace_vystupy&submidSEO=GAC_Research_the_segregation_of_children.pdf, Accessed 1 December 2010

Republic attend “practical elementary schools” compared to only two percent of non-Roma children. Under the law, such schools should only be attended only by children diagnosed with “light mental disability,” a relatively rare condition which is ordinarily expected to be seen in only two percent of the children in any given population.

In another NGO report released in 2009, “Injustice Renamed,” Amnesty International noted that segregated education in the Czech Republic takes various forms. Roma children are being segregated not only into “practical schools,” but also into special needs classes at mainstream schools. Mainstream elementary schools are becoming mostly Roma over time due to “white flight.” They are also establishing all-Roma classes which, while ostensibly teaching according to the standard curriculum, are actually providing a substandard education.

The discriminatory treatment of the Roma in this part of the world has deep roots and predates the communist era. According to researcher David Čaněk, most of the Roma living on the territory of what would become Czechoslovakia in 1918 were sedentarized during the 19th century by officials of the Austro-Hungarian Empire.¹¹ The democratic government of the First Republic (1918–1938) instituted discriminatory treatment of the Roma from the start; at the time, the Roma were the only minority in the region whose members were for the most part physically, visually distinct from the majority society (other national minorities—Germans, Hungarians, Poles, Ukrainians—were not visually distinct from the Czechs and Slovaks). The Roma were not included in Czechoslovakia’s minority protection system, and in 1927 a law was adopted which discriminated against “vagrant” (itinerant or travelling) Roma and was enforced until its repeal in 1950. The Czechoslovak authorities instituted well-developed provisions for protecting other national minorities during both the prewar and postwar periods, but never designed any such provisions for the Roma.

Very few Roma survived the Holocaust in the Czech lands, but most of the Roma living in Slovakia did survive. The ban on racial discrimination instituted after 1945 did not prevent state institutions from discriminating against the Roma, and there were few critics of the government’s failure to protect them. During the postwar era, many Roma migrated from Slovakia (or were forcibly removed by the authorities) to the Czech lands. This was part of a more general migration of other Czechoslovaks from Slovakia to the borders with Austria and Germany after the postwar expulsion of the Sudeten Germans depopulated the border regions. The

¹¹ Čaněk, “Roma and Other Ethnic Minorities in Czech and Slovak Schools (1945–1998).”

Czechoslovak government's postwar plans even included nationwide labor camps for Roma, although such measures were only ever instituted in Slovakia proper.¹²

In 1947, the Czechoslovak authorities conducted a census of Roma which registered almost 85,000 Roma individuals in Slovakia and not quite 17,000 in the Czech lands. There is reportedly almost no data available from this period on Roma in education, with the exception of some schools established particularly for Slovak Roma in the Czech lands. According to Čaněk, Roma and other minorities seem to have hoped the 1948 communist putsch might improve their situations, and during communism living conditions for Roma in the Czech lands became dramatically superior to those for Roma living in Slovakia. In the Czech lands, Roma who moved into various industrial centers were provided with non-segregated, standard housing, while in Slovakia the Roma minority remained housed in Roma-only slums.

Čaněk reports that information from the 1950s indicates Roma educational achievement was quite low and Roma illiteracy commonplace (in a country with almost 100 percent general literacy). The authorities began to design and implement various education measures targeting the Roma minority during this decade, such as literacy courses for adult Roma and remedial classes for Roma children who had never attended school. In 1952 a Czechoslovak Interior Ministry decree stipulated that "Gypsy children are to be assigned to ... schools with other children" and that special classes and schools exclusively for Roma children could only be temporarily established when integration was not immediately possible. These "temporary" arrangements became part of the network of "special schools" and were typical of Roma education under communism. The schools were not comparable to other schools established for national minorities, which were authorized to provide a mainstream education to children in their native languages. In the Roma schools, the language of instruction in the Czech lands was Czech, not Romanes, and their purpose was to serve "neglected" Roma. The authorities also enrolled Roma children in preschool education, reportedly going so far as to privilege Roma preschoolers over non-Roma preschoolers in some areas. Illiteracy decreased significantly for the postwar generation of Roma as a result. During the 1950s and 1960s, the authorities also reportedly frequently expressed concern at the disproportionate representation of Roma in the "special schools."

¹² Ibid.

Čaněk reports that throughout the communist era, the Roma were considered a “sub-ethnic group without high culture,” not a “nation” with its own culture and language (unlike most of the other minorities living in Czechoslovakia). Until 1958, government policy with respect to the Roma focused on their “assimilation,” “civilization,” or “re-education.” While the Czechoslovak Creative Writers’ Association protested this policy and said Roma should be granted the same protections and treatment as other national minorities, their criticism fell on deaf ears. Some educators also criticized the practice of assigning Roma children into schools for the intellectually disabled and tried to point out that most of the children in such schools were actually intellectually healthy, but they were also ignored.

Čaněk reports that official statistics from 1970 show that only 1.7 percent of Roma in the postwar generation had attended some years of secondary education. Many Roma had not even completed primary education. A large proportion of Roma children attended schools for the intellectually disabled. None of this impacted their lives economically, as the wage gap between intellectual and manual work in communist Czechoslovakia was minute, with unqualified manual labor often compensated even more highly than qualified labor. In 1972, a survey of a major industrial city in the Czech lands with a large Roma population showed that half of the Roma employed there took home above-average wages; only 15 percent of Roma (most of them women) were earning below-average wages.

Čaněk reports that in 1976, at the height of the “normalization” era following the 1968 Warsaw Pact invasion (as a result of which the pro-Soviet elements of the Communist Party tightened their grip on power), the education system underwent a major reform, shortening the length of primary education to eight years and instituting a more difficult curriculum. This resulted in even larger numbers of pupils being assigned to “special schools.” The reform was criticized by many educators and experts and constituted an enormous setback for Roma achievement, essentially undoing what little progress had been made until then. Prior to the reform, the proportion of Roma in “special schools” had been decreasing, particularly in the Czech lands during the 1960s, but after the reform, the numbers of Roma children in special education there rose sharply. By the mid-1980s, almost 50 percent of all Roma in the Czech lands were enrolled in special education (prior to the reform, less than 25 percent of Roma children had attended such education). There is no record of officials having been alarmed by the increased segregation of Roma into spe-

cial education during the course of the late 1970s and 1980s, and this is the model which some practitioners of special needs education in the Czech Republic would reportedly like to see re-instituted today.

Roma were not officially recognized in Czechoslovakia as a national minority until after the transition to democracy in 1989. In the immediate aftermath of the Velvet Revolution, some Roma intellectuals called for Romanes-language instruction in schools, but the establishment of a handful of such schools in the Czech lands has taken a very long time and has been fraught with complications. The Roma were the least-prepared members of Czechoslovak society to adjust to competition in a market economy. Most were unable to compete with an influx of desperate manual laborers from the former Soviet Union (Ukraine in particular) willing to work under poor conditions for very little money. Official recognition of the Roma as a national minority, therefore, has done nothing to prevent their economic decline even as the Czech Republic has become the region's most advanced market economy in the 21st century.

In the 1991 census, 33,000 people declared Roma nationality in the Czech lands and almost 76,000 in Slovakia. The general consensus was that these official numbers underrepresented the actual size of the Roma community by about fivefold. There could be several reasons for this lack of willingness to self-identify, which has been repeated in censuses since: Either most Roma have genuinely assimilated as a result of decades of communist policy, or they are actively concealing their identity in order to avoid exposing themselves to further discrimination.

In 1993, Czechoslovakia officially split into two countries, the Czech Republic and Slovakia, in what was called the "Velvet Divorce." In 1997, the Czech government tasked the Minister of Education with ending the disproportionate assignment of Roma pupils into schools for the intellectually disabled. The ministry established pre-school classes throughout the country (called "preparatory classes") to prepare unprepared children (most of them Roma) for primary education. In 1998, 50 such classes (enrolling 670 children) were in place throughout the country. As always, the design of these measures was phrased in ethnically neutral terms, even though their implementation was implicitly understood to target the Roma minority.

The Czech Republic acceded to the European Union in 2004. On January 1, 2005, the new Schools Act entered into force. This legislation was touted by the Czech authorities internationally as intended to eliminate the discrimination and segregation of Roma children in the Czech education system. In practice, as we have reviewed above, no such transformation has occurred.

The *D.H.* judgment was handed down in 2007. Since the decision, whenever Czech officials have found themselves tasked with reporting on this issue to intergovernmental organizations overseeing compliance with international human rights commitments (such as the Council of Europe, the OSCE, or UN treaty bodies) they have generally acknowledged the extent of ethnic segregation in the schools and the unequal opportunities afforded the Roma minority despite the legal and policy changes that have been undertaken. However, as of this writing, none of the measures developed by the government so far have introduced an explicit obligation to address ethnic segregation in the education system. The approach currently being taken does not ensure Roma children will not continue to be deprived of their right to receive a discrimination-free education.

To date the only “investment” into ethnic desegregation proper has been the production of the GAC and UIV studies and the Czech School Inspection Authority’s report. Otherwise, there are no financial incentive programs in place to promote the ethnic desegregation of the schools, nor are there any other plans to fund the regular collection of data disaggregated by ethnicity with respect to the education system.

Recently, some measures have been developed within the Education Ministry which do have the potential to indirectly impact the segregation mechanism, but as of this writing these measures have not yet been adopted. They are amendments to Decrees 72 and 73; Decree 72 regulates how the educational-psychological testing centers responsible for diagnosing children and recommending special measures for them are run, and Decree 73 regulates how special needs education is administered. While these regulations do not specifically address segregation *per se*, the proposed amendments would better regulate the provision of education to children with special educational needs.¹³

Most of the amendments concern Decree 73—specifically, they would better define the conditions for educating “socially disadvantaged” children. More emphasis would be placed on creating the necessary conditions to educate all but the most severely disabled children in mainstream schools. The amended decrees would describe various ways to achieve this, including equalizing measures aimed at entirely preventing (or at least minimizing) school dropout among either the “socially disadvantaged” or the physically, intellectually or mentally disabled. Responsibility for evaluating children’s needs would also be shifted from educational

¹³ Kostlán, “Laurenčíková: Delays to Czech education reform are uneconomical and unethical.”

psychologists to the schools themselves, and the ministry would provide schools with a catalog of equalizing measures describing in detail the options for support to various groups of pupils (such as those suffering from chronic illness, from various kinds of learning disorders, those coming from “socio-culturally disadvantaging environments,” those whose parents are foreigners and who therefore speak Czech as a second language, etc.). These changes would improve upon the unsatisfactory definition of “social disadvantage” currently in the law, making it easier for psychologists and schools to identify such children, and would better define what constitutes a serious physical, intellectual or mental disability.

The changes to Decree 73 which could most directly impact the segregation of Roma children would be the following: An explicit ban would be established on educating non-disabled children according to the curriculum for disabled children. Schools would no longer be permitted to call themselves “practical elementary” schools, as this designation currently violates the Schools Act. The “informed consent” of parents would become a necessary precondition for a child to be assigned to special needs education. Educational-psychological counseling centers would be required to regularly re-evaluate children’s educational needs, the effect of the support measures provided to them, and the grounds on which they were recommended for special education. The assignment of children into special education for “diagnostic purposes” would also be newly regulated; the time period during which a child could be assigned to such education would be reduced to a maximum of three months, after which the counseling center would be required to evaluate this diagnostic placement and recommend measures to meet the child’s needs. Lastly, the amendments proposed to Decree 72 would introduce a more restricted time frame during which a psychological evaluation would be considered applicable to the child in question and would make it possible for psychologists to evaluate children in their home environments in cooperation with child welfare authorities.

Both Czechoslovakia and the Czech Republic have been bound by international human rights agreements which have made it clear that segregation is prohibited. At the start of 2010, a new penal code took effect in the country which specifically listed segregation as a crime.¹⁴ In March 2010, the

¹⁴ Section 401 on crimes against humanity lists segregation at letter f) “apartheid or other similar segregation or discrimination” without elaborating a definition. Law 40/2009, Coll., Criminal Code, available in Czech at http://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=40/2009&typeLaw=zakon&what=Cislo_zakona_smlouvy, Accessed 1 December 2010.

government approved a National Action Plan for Inclusive Education (Národní akční plán inkluzivního vzdělávání, NAPIV), which was to serve as a basic document intended to ensure equal access for all to education by increasing inclusion and preventing discrimination. The first (and so far only) meeting of the ministerial working groups tasked with implementing NAPIV was held in June 2010. When the current government took office in July 2010, it did not carry through on a previous promise made by Czech PM Nečas to include desegregation as a priority in the governing coalition's program declaration. A media campaign on desegregation promised in November 2009 by the previous minister has not been mentioned again by the new leadership at the ministry. Instead, the ministry is announcing budget cuts which specifically impact teaching aids for Roma children and is considering strengthening exclusively repressive measures, such as making welfare disbursement contingent up on children's school attendance. Responsibility for implementing the *D.H.* judgment has been shifted as far down the ministerial hierarchy as possible and the department responsible has seen its staff halved. Work on a much-publicized project to introduce instruction of the Romanes language as an elective subject has not continued. Lastly, the ministry continues to make statements to the media which indicate the trend will be toward strengthening segregation instead of addressing the causes of discrimination in the schools.

In October 2010, the director of the Human Rights Section of the Office of the Government of the Czech Republic sent an official communication to the Prime Minister explaining that the delay of the adoption of these revised decrees was posing a serious obstacle to the country meeting its obligations with respect to the systemic changes required by the *D.H.* judgment and the country's international human rights obligations.¹⁵ The delay in the adoption of these amendments has been due to the amount of criticism the proposed amendments have generated within the ministry and the special education industry itself.

In this light it is perhaps not surprising to recall that the Czech Republic was the last EU member state to bring the EU Race Directive 2000/43 into domestic legislation in 2009 (as Law No. 198/2009 Coll.). The country only complied after it was advised it would most likely lose should the European Commission bring it before the European Court of Justice in Luxembourg for non-compliance with its accession obligations. Clearly,

¹⁵ Communication no. 17690/10—KRP, October 19, 2010, from to Mgr. Czesław Walek, director of the Human Rights Section of the Office of the Government of the Czech Republic, to Czech Prime Minister Petr Nečas.

neither the existing general anti-discrimination provisions in the Schools Act nor the implementation of the EU Race Directive have impacted school desegregation in the Czech Republic at all.

In his April 2010 review of the March 2010 Czech School Inspection report, the Czech ombudsman noted that access to education is now also regulated by the 2009 anti-discrimination law. It is prohibited in the Czech Republic to prevent access to education on the basis of ethnic or national origin or race. The ombudsman found that the fact that disproportionately high numbers of Roma children are diagnosed as disabled cannot be justified by any legitimate goal and constitutes indirect discrimination as defined by the anti-discrimination law. Here the existence of any particular intent to discriminate is not relevant; rather, the current practice is resulting in Roma children being unjustifiably segregated out of mainstream education and denied access to quality education.

There are other structural mechanisms in place besides these misdiagnoses that also serve to perpetuate the segregation of Roma children. When preparatory (preschool) classes are opened at the “practical elementary” schools, Roma children tend to start their primary education at those schools as well. According to a recent evaluation by the Ministry of Education, only 10 percent of Roma children attending preparatory classes located at “practical schools” go on to enroll in mainstream education. However, 80 percent of the Roma children attending preparatory classes at mainstream schools not only enroll in mainstream schools, they have a higher chance of staying in them.¹⁶

Lastly, it must be remembered that Roma children who do attend mainstream elementary schools face discrimination and segregation in them. Some mainstream elementary schools are exclusively (or predominantly) attended by Roma children, and Roma-only classes may also be established at mainstream schools in which the children receive inferior educations. This pervasive discrimination within the Czech education system perpetuates the ongoing discrimination against, intolerance of, and prejudice towards Roma in Czech society.

There are two primary obstacles to the promotion of desegregation. The first is that the administrators, educators and psychologists who are

¹⁶ “V CR funguje 164 přípravných tříd pro romské děti, přibývá jich“, (164 preparatory classes for Roma children running in the Czech Republic, more to come), 19 March 2008, National Youth Information Centre (NICM), available at <http://www.icm.cz/v-cr-funguje-164-pripravnych-trid-pro-romske-deti-pribyva-jich/> Accessed 24 November 2010.

recommending to Roma parents that their children need special education are not sufficiently informing the parents of the ramifications for their children of consenting to these arrangements. This is why “informed consent” of parents or guardians is one of the proposed amendments to Decree 73. The second obstacle is that there has been no serious nationwide discussion of why it is important to the future of the country as a whole that all children in the Czech Republic be educated together irrespective of their citizenship, disability, ethnic origin, socioeconomic status or any other distinguishing criteria.

As the European Roma Rights Center and Open Society Justice Initiative have recommended, the Czech government needs to make its commitment to desegregation of its school system unmistakably clear. An end to both discrimination and segregation must become the central focus of Czech education policy and its highest immediate priority. The government should enact an enforceable obligation to desegregate schools and publicly state—for domestic consumption—that its goal is to achieve desegregation by 2015, when the Decade of Roma Inclusion will come to an end. At the same time it should formulate, as quickly as possible, a comprehensive, detailed, multi-dimensional strategic plan with clear two-year and four-year targets to eliminate the ethnic segregation of Roma children, in consultation with educators, representatives of the central, regional and local authorities, and Roma organizations. The plan should include annual monitoring and publication of anonymous data disaggregated by ethnicity, school by school and district by district, so the progress or lack thereof in desegregating the schools can be followed. This plan should be adopted and implemented as quickly as possible in order to meet the 2015 deadline.

At European level, EU authorities should closely monitor and strictly enforce, to the strongest possible degree, the Czech Republic’s obligation to comply with the Race Directive and its other accession obligations. The Committee of Ministers of the Council of Europe should also do more to require the Czech Republic to accelerate its implementation of the systemic changes called for by the *D.H.* judgment.

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Interview with Viktória Mohácsi from Hungary

Viktória Mohácsi initiated the government school desegregation program in her capacity as Commissioner for Education with the Ministry of Education in Hungary (2002–2004). She is a former Member of the European Parliament. In that capacity she initiated several resolutions regarding the situation of Roma in Europe and spoke widely against school segregation. Previously, she was a researcher with the European Roma Rights Center.

The interviewers were Iulius Rostas, Mihai Surdu and Marius Taba.

Question: My first questions are about how the authorities in Hungary dealt with minority education in the transition period. Were there schools and classes where teaching was in the mother tongue, and, with respect to Roma, how did the educational system deal with Romani culture and identity?

Viktória Mohácsi: First, we need to outline a broader perspective as regards the whole educational system rather than simply listing different kinds of programs in the educational system. I learned in the European Parliament that although joining the European Union (2004) reduces the differences of the legal measures between the countries, when we analyze the political practice, we cannot forget that each region has historical peculiarities.

From this viewpoint the minority issue has a special significance. The minority position of the Walloons in Belgium, or the Basques in Spain, means something entirely different than that of, say, Romanians or Slovaks living in Hungary. And the minority position of the Roma is totally different than those. The principal difference is that the position of minorities in Hungary do not have regional bonds, but primarily identify themselves based on national histories. As a result, the education of minorities does not aim to nurse language or culture, but to strengthen national identity.

It is an peculiarity of formerly socialist countries, like Hungary, that laws about minorities only started taking shape with the political transformation. According to my experience, the consequence is that principles formulated in the laws differ from the political practice and the dispensation of justice in many ways.

But let us return to minority education in general in Hungary. Following the political transformation, the opportunity arose to support the study of the Hungarian population living over the borders, for fixing this in law. And that turned into a situation that for minorities living within our homeland, we would not be granted the same rights and support.

The Romani people—one of twelve minority groups—were designated as an ethnic minority group, onto which group vocational pedagogic requirements “forgot to be developed.” At the same time the question had already been raised: whether the Roma need national (ethnic-minority) consciousness keeping program, while we do not have mother country and—according to public belief—we do not have a history, traditions, etc. Or do we need a special program created for “cigány?” This cannot be a central question of politics anymore.

A central question has stayed with me: what does minority education mean to an ethnic minority group’s children. Governments offered different answers after the political transition, but they were similar in one thing: they mixed our ethnic minority group’s folklore and cultural features with the characters defined by the prejudice and social situation of Roma, and created “Gypsy minority education,” of which all our children became the experimental subjects.

Roma minority education has gaps: sometimes Roma identity is articulated by non-Romani schoolmasters, or Romani language teaching with a non-Romani educator, who does not speak Romani, or remedial programs of low quality, which simply strengthen segregation. We are probably not mistaken to claim that this is still a learning process.

I think our educational system still needs change. The Hungarian educational system in this sense is not at all flexible, and not child-centered. Teachers and the whole school system have to focus on serving the children, and it should not be about whether you are Roma or non-Roma, or whether you belong to a minority. The fundamental issue is that, in accordance with the laws and the constitution, we Roma have the same right to receive a quality education like everybody else. And the Hungarian educational system fails to provide equal access to quality education.

Q: You mentioned discrimination. So was there discrimination during communism or not? If there was, how did it appear?

V.M.: Yes, of course, this confusion created a discriminatory educational system, which existed then as it does today. When my mother talked to me about education in those times, separate classes for Roma seemed to have been a normal thing. But even today, most people in Hungary think it is normal for us to be in a ghetto and receive lower quality education: ordinary people who do not deal with education-related issues, do not have a clear idea about the negative impact of such education. Nor do most ordinary Romani parents.

Discrimination against Roma existed during communism, and the situation has not changed. In fact, it became deeper and more visible, which, together with the difficult economic and social situation that we live in are cause for very serious concern. Discrimination, in my view, is not that the system has not been paying attention to language-related and cultural issues. The first and most urgent issue to be addressed is the fact that the educational system are violating the rights of our children—Romani kids receive lower quality education because of segregation.

If policy makers think that minority education can solve the problem, they are wrong. I do not believe in this kind of minority education. Of course, there are positive projects implemented within the framework of minority education, which have produced good results, but these are only pilot projects, implemented in certain cities or in small communities, and then there is no continuity. They exist only as long as donors provide financial support to continue them.

Q: Were there other minorities during communism which had access to minority education?

V.M.: The situation for other Hungarian national minorities was regulated first, after the Second World War. The nationalities the law named as being required to teach in the students' mother tongue were Germans, Slovaks, Southern Slavs (Serbians, Croatians, Slovenians) and Romanians.

The other seven minority groups were named forty-four years later. According to today's definition, from the 1993 minority law, Roma are qualified as an ethnic group. A total of thirteen other minorities are recognized, with Jews defined as an independent religious group.

In reality, after the war, vernacular minority education was only described but not actual. For the six minority groups all together maintained about thirty institutions, which rose up into hundreds within a couple of years. But later that number decreased drastically. This was influenced significantly by international and internal political events (the post-war relocations), and by the nationality school drop-outs, which was worse

than the national average. The number of trained teachers was small, and few knew the nationality language well. They struggled with material difficulties—equipment, furniture, and other items were incomplete, and formal curricula were developed only for the Croatian and the Romanian nationality schools. The domestic national minorities counted as bilingual ones mostly, however, their mother tongue was not identical with the literary language. According to a survey prepared in 1950, the nationality schools had a significantly lower standards than Hungarian average. Possibly, that could be said to be because of the “cross-registration tendency” from a primary minority school into a Hungarian national upper school, because most minority parents registered their children against a higher standard. So minority education is struggling with similar difficulties sixty years later.

Our group’s ethnic-minority education started in 1993, and we cannot produce better result after sixty years as the other minorities if the educational system is not changed and does not accept all kids. The problem is not resolved so simply, without legal and other measures to ensure equality, as the foresaid minority groups’ children: we have big chance that our children would not be warmly welcomed by a qualitative educational institution.

Q: Were there any measures which targeted Romani education under communism, not necessarily minority education but special measures designed for Roma?

V.M.: Yes, I myself was involved with such a project in the 1980s. The “party delegates” visited Romani settlements and examined children and families who could be successful candidates to create a Romani elite. They thought the problem might be found within the community. They selected my sister and myself from our village, and others who achieved good results in education, and organized a week-long summer camp. While we thought the summer camp was going to be fun, it was not. After that summer, our family was checked each month for about ten years. My mother thought they wanted to help us become more successful in life, but their project turned out to be an experiment to try to change the attitudes of the Romani children towards hygiene, including my family. At that time, we felt it was “only” about interfering into our private individual life, so it was not about education.

Q: How long did this initiative last?

V.M.: I do not know when this initiative exactly started, but we experienced it for about ten years, including my high school years. Today, we can find those so-called attitude changing efforts in different pilot

projects, to find “best practices.” The question is what “best practice” means.

Q: What changes, if any, did these initiatives bring to the educational system in regard to the education of Roma?

V.M.: As far as I am concerned, in my personal case, it had a positive effect, but did not change the educational system at all. But if I had not participated in such an initiative, I may still have become a member of—as they would call it—the Romani elite. The problem within the educational system is the exclusion of average Romani children, not those who are raised in so-called elite families. Non-Roma policy makers think that the elite should close the gap between them and the marginalized, meaning that where the educational system fails, it is the role of the Romani elite to do the job. So they focus on the elite and not on the average child. If you compare the majority society and the Romani society, it is all the same: poor people, rich people, bad people, good people. This is normal. But policy makers tend to generalize. When I was a member of the European Parliament, non-Romani colleagues never knew which one is Lívía Járóka and which one is Viktória Mohácsi... Roma-Roma. They all mix us even if we represent different positions.

Q: So, as an experiment, the communists were, so to speak, recruiting elite Romani children to change their life...

V.M.: Not to integrate Romani people into schools, societies, but to change their life. If they could change one individual, then they could change 800,000 Romani people... I do not think it is working. Don't you think that these kind of measures could be called assimilation?

Q: What do you think was the purpose of such a model proposed by the communists?

V.M.: It had a two-fold aim. On the one hand, it aimed to change a life and, as such, it was a process of assimilation. On the other hand, recruiting elite Romani children and putting them in social camps was a matter of social control. But the ultimate scope of the experiment was to promote the assimilation of Roma in the Hungarian context of communism.

Q: Do you think the assimilation of Roma is still on the agenda?

V.M.: In a way, yes. In the perception of many people, who represent the prejudiced view, many current problems in Hungary are caused by Roma. Those people are much louder than the weak voice of Romani activists or human rights NGOs. It means that the so-called integration processes generated by the government must focus on Romani communities, where we have to list our special problems. The government—and it does not matter if it is led by socialists or conservatives—simply would

like to change the whole Romani population, and does not see the whole exclusive education system or employment sector.

When I was working at the Ministry of Education, we conducted a survey in which respondents were asked to answer the question, “would you be willing to send your children to a Romani-only class, or to have your children sit next to a Romani child?” 94 percent of the respondents said “no.” I do not know if the other six percent were Romani or not. What is it then, if not exclusion? At the same time, those Romani families which are better off do not send their children to ghetto schools. This is not because they do not want their children to sit next to other Romani children, but because of the quality of education in such schools. They want the best for their children, and they want their children to be successful and competitive in society, not to be excluded.

In my view, being Romani today is more unfavorable than it was before, not only in education, but in everyday life. They majority does not want us as a distinct community. The reason why today the word assimilation does not even exist in the documents is because our politicians have at least learned that to use the word “assimilation” is politically incorrect; therefore they use “integration” which sounds more acceptable.

Q: So is this the new word for assimilation?

V.M.: The approach is to make it look like integration. That is why I prefer the word desegregation because it expresses exactly what needs to be done. With the word “integration” people mix assimilation, social issues, and everything else into this idea, including minority education. Here I see a contradiction in majority society: on the one hand, they want us to be assimilated, to be like them. On the other hand, the majority does not want us to be assimilated, to be part of the Hungarian society. They want us to be assimilated, but still to keep us at an inferior status in society. And that is not possible because these two meanings contradict each other.

Q: In Hungary, there is a large group of disadvantaged people who are referred to as “multiply disadvantaged people.” Why have Roma been dealt with simply as part of this group of disadvantaged people?

V.M.: When we examined the situation, we realized that there were three levels of differentiation: the ethnic background, the education background, and the social background. According to the 1993 minority law, there is freedom of choice regarding one’s identity. According to census data, three-fourths of Romani individuals do not declare their identity. In such a situation targeting is impossible.

According to different education surveys, eight elementary years is the average among most of Romani parents, which creates a disadvantaged

social situation. When we established indicators for EU program planning we had to define exactly our target group, which had to appear in the new desegregation regulations (2002) to make sure that desegregation is not just on paper. If the Holocaust experience dictates that it is not possible to oblige and expose a group to the danger of identification, then it is not allowed to take away the basic opportunity from our folks. So, with the sociologists' advice, we named the normative support "disadvantaged" kids. As the commissioner responsible for desegregation (2002–2004), my first step was to explain to the minister the difference between minority education and desegregation.

Q: Who put the issue of segregation in Hungary on the public agenda?

V.M.: The so-called catch-up program was elaborated in 1993–1994 by the same liberal minister of education, Bálint Magyar, who supported my initiatives in terms of desegregation in 2002–2004. The goal of the catch-up program was to raise the average level of quality of education for Romani children, but it failed, because it generalized all Romani students—as the decision makers always do—and put them into segregated education. In fact, it had the opposite effect: lower quality and segregated classes. The gap between the average student and our kids grew deeper and deeper. The former minister understood in 2002 that we had to change the whole education system to be as inclusive as possible, and he allocated a two-hundred million forints budget at the beginning to develop the desegregation strategy. There were 120 civil servants working in a network in those regions where institutional segregation existed. With my staff, we managed to get approximately 700 million EUR during the EU accession period, until 2013.

Of course, without the promotion of several national and international NGOs—the European Roma Rights Center, the Roma Participation Program of the OSI and others—it would not have started as easy.

But the socialists' election campaign brought the most important changes: the socialists promised in 2002 to eliminate Romani children's segregation in education. Their determination and the will of the liberal minister were the most important factors, I would say. So I was very lucky in this situation because the decision maker listened to me. He saw that it was a real problem and one that violated human rights. The minister held liberal views, and we fulfilled the socialists' promises, and so it was relatively easy to push through all the human rights related initiatives.

Q: In the elections of 1998, politicians seemed to be quite interested in Roma-related issues because it was possible to receive support from

Romani organizations. Have they addressed in any way the issue of segregation in education? Were they talking about segregation?

V.M.: No, not really for the 1998 elections. Even though segregation of Romani children was present during communism and the early 90s—as well as today—political parties never put segregation or “Roma rights” on their agenda. The socialists did it once in 2002, as I mentioned already. After communism, owing to the minority law, we received the right to create our own local governments, but that is only for cultural rights. The human rights-based movement started later, some time after 2000. The majority to a high degree supported focusing on cultural issues. What the majority wanted from Roma was music and dancing. The first elections were not targeting Roma as potential voters.

Q: How did you develop your first desegregation initiative?

V.M.: When I was working at the European Roma Rights Center, I kept raising this issue. It took me a couple of years to develop this pilot project in Hajdúhadház, a small settlement in the east of Hungary. The Hajdúhadház project resembled the Bulgarian Vidin project. I submitted the project to the ERRC management which, with the financial support from the OSI, started the project there. First, I gathered all the Romani children in town, and we re-tested them. The results of the test demonstrated that over 50 percent of the children who attended schools for children who need special education did not have mental health problems, so they should have been in the mainstream education. I went to the Ministry of Education and presented the findings and my plan. The minister accepted the plan.

Q: Why does this happen, why do school authorities classify Romani children as children with special educational needs?

V.M.: Simply because non-Roma people think that we are unable to succeed in mainstream schools.

Q: Was this the situation during communist times as well?

V.M.: Yes. It is not a new phenomenon. However, the trend is more intense these days due to the economic crisis. A “normal kid” costs in per capita support approximately 750 EUR, while 1,650 EUR can be received for a mentally disabled kid.

Q: What kind of segregation exists within the Hungarian educational system?

V.M.: All of the existing kinds: segregated classrooms, segregated buildings, institutions. If a settlement has a Romani ghetto, they build a school within its borders and then they say that children shall attend that school as one built for that locality. Additionally, Roma are often unaware they have the right to choose a school.

Q: When you talk about the private student system, do you think this is a form of segregation?

V.M.: No, not at all. I would not call it a form of segregation because they are not even in the system, they are kept out of the educational system. In Hungary, children are put in such institutions mainly because of alleged behavioral problems. If a teacher does not want to deal with a child, he or she can offer this option to the parents. At first, parents usually say no, but after some time and intense pressure from the school administration and particular teachers, they accept the option. When we realized in 2002 that this tendency is growing year by year, we made a change to the law, but it has not been successful because parents do not know their rights.

Q: Interestingly, this program was designed for gifted children, wasn't it?

V.M.: Yes, it was designed for gifted children, not necessarily Roma. Romani students frequently become private students due to behavioral problems. If you compare the two numbers—Romani and non-Romani private students—the number of Roma is considerably higher. The most serious disadvantage of being a private student is that if you do not attend the school, you do not learn anything. Additionally, parents of private students do not receive financial support or incentives. Private students are invited every three months to do a test, and even if the results are extremely poor, they pass the test. In this way, they are de facto excluded from the schools and receive a lower quality education.

Q: Do you think this is a very widespread practice?

V.M.: I do not know the exact figures, but it is thousands of students, and, in terms of proportions, the number of private students in the whole country is growing each year by at least ten percent.

Q: With respect to the special school system, are there incentives offered to the schools and/or parents that are willing to send Romani children to special classes or special schools, and if yes, what about parents' consent that is needed in order for their children to be sent to special schools?

V.M.: Roma have been placed in special educational institutions, among others, because of the higher budget per student allocated by the government for those children. Thus, a maintainer may have a vested interest in classes with special curriculum only to have a larger budget. This type of discrimination is more than simple discrimination, I would call it egregious discrimination. Those children who study in schools for children with special educational needs are destined not to be able to pursue further, mainstream education. Those who pursue further educa-

tion can continue in special high schools and at best become skilled workers.

The special education system is very complicated; when, for a longer period, parents hear from the teacher that their children have poor abilities and that it would be emotionally better for them to be in a special school, they come to see it as the only option. Their intention is to protect their child, but they do not receive all the necessary information regarding the consequences of their approval.

In the past ten years, the number of children in the special educational system has been growing. Despite the amendments made to the law on education in 2002, and despite the state program called "From the Last Row" in which 2,222 children were re-examined. In the ministry, I initiated a ministerial decree which obliged schools to re-examine children who had been placed in special schools at the first and second grades. As a result, 222 children were found not to be disabled, this is ten percent of the examined children. The ministerial decree included the provision of their immediate placement in mainstream schools. Somewhat later, I selected five children from among those 222 and visited them. Despite the favorable decision, they were still in special schools. I asked the parents if they knew about the re-examination. They did not. No information on this was provided to the parents, and the kids are still in the special system.

In Hungary, Romani parents of kids who have been diagnosed with special needs are not receiving any financial benefits. They do not have a direct financial interest in this issue. Only the administrators receive financial benefits.

Q: So children coming from special schools can get only as far as Vocational Education Training?

V.M.: Theoretically no, but practically yes.

Q: Who is maintaining segregation in Hungary? Is there anybody in charge of desegregation? Do politicians, ministries, local authorities, schools, parents contribute to maintaining the status quo?

V.M.: Since the latest elections in which the conservatives received an overwhelming victory, I have not heard a single voice raised about desegregation. Nothing.

Q: Are there no more visible Romani voices to be heard in favor of desegregation?

V.M.: Not so many. I am afraid that if politicians see that we are making so much noise about this, they may simply cut from the law the eleven paragraphs on desegregation. There is no liberal party in the parliament,

and the socialists are too weak to do anything. I am really afraid that the whole desegregation process in Hungary is at risk.

Q: This is one example of a group that opposes desegregation. Are there institutions that are proposing desegregation?

V.M.: There are a few civic organizations, and few local governments which have put the issue of desegregation on their agenda. But the majority opposes desegregation.

Q: How do Romani organizations react to the issue of desegregation? Do they support or oppose it?

V.M.: In Hungary, you cannot decide exactly who is civic and who is political among the Romani activists. I call them activists, because since the Minority law was revised the last time (2004) only civic organizations could put forward a candidate for membership of Minority Self Governments. The picture is more complicated: at the beginning (2002), for example, I lobbied with Flórián Farkas, who is president of the Lungo Drom organization, which is in a partnership with the governing Fidesz party. When I first met him to outline the desegregation project, he was not interested in this issue. Flórián Farkas is a member of Fidesz, in fact, and now he is one of its policy makers on Roma-related issues. He also said: “I can see what is going on in the Gandhi school, but I will never see what will happen in the desegregation process, so it is better to establish as many Gandhi schools as possible, but not desegregation.” Most politicians share this opinion: socialists say that it is not a bad system for the Romani children to be in the special educational system. In a conversation on the issue of desegregation, a Fidesz politician who specializes in education told me, “this desegregation project looks very serious, so we are not opposing it officially, but my offer to you is to make a lot of Gandhi-type secondary schools named after Viktória Mohácsi. You will be more successful in politics if you do it like this, instead of this very complicated desegregation program.” I feel sorry having realized that we cannot have selection of Romani voices among the politicians, who all do not understand this issue, they mix it with minority education, and they do not pay attention to it.

Q: How about Romani activists on the local level?

V.M.: They are inactive. They have been passively watching what is going on.

Q: What about the academic world, because we know that there have been good studies developed here in Hungary?

V.M.: Yes, some academic research has been carried out, but the initiatives have not come from the academic world. That is why it is better to

be a politician than an activist. The voice of an activist is heard less than that of a politician.

Q: How did political parties react to the issue of desegregation?

V.M.: Just like the Romani politicians, particularly when they were candidates during the electoral campaign in 2002, that is, when they spoke little bit about desegregation.

Q: Who were the candidates who spoke in favor of desegregation?

V.M.: Bálint Magyar, the minister, and also László Teleki, the Romani socialist politician, but he was not talking about the desegregation as a process, because he did not know what it means, but talking about the problem of segregation. Teleki had more speeches about scholarship programs. And myself on the liberals' list, at the EU election campaign, in 2004.

Q: Do you think Roma were attracted by those speeches? Did they vote for these candidates?

V.M.: Roma? No, those speeches were not too persuasive, I believe. Politicians did not want to put too much emphasis on the issue of segregation because they were afraid to lose the support of the majority. Where we organized our campaign—mostly in those regions where the Romani population was higher than the average in the country, we visited approximately 80 villages, towns—we gathered 20 to 40 percent more votes than the liberals had usually collected in the past. My topic was only desegregation in education. But I am not sure the increase is due to my speeches or to other factors.

Q: Let's move to the next question—the first steps of desegregation, following the 2002 elections and your meeting with Bálint Magyar who offered the position of the commissioner responsible for integration of disadvantaged children.

V.M.: I wanted desegregation, Bálint Magyar wanted integration. According to his explanation, desegregation has a negative connotation, implying segregation which needs to be eliminated. His argument was that if we laid blame on the schools and said that they had been on the wrong way in the past, they would not cooperate with us in the future. So I agreed, but insisted that, whatever it is called, it has to be about desegregation—the elimination of Gypsy classes and schools.

Q: What were the first measures you took as a commissioner for integration?

V.M.: Under my leadership with approximately 20 to 25 policy makers, and another 90 workers in the national network, we created three main actions for desegregation: first, special education reform for the mentally

disabled consisting of re-examination of children in special schools, supervision of services in special schools, professional development of Expert Committees examining mental health, new per-capita funding for re-integration of children into mainstream education, new culture-independent testing methods, electronic data collection system and restriction of laws regulating examinations; second, elaboration of the integration program encompassing the National Educational Integration Network, professional support, institutional networking of schools, knowledge and experience sharing, per-capita funding, integrated education, skills development for children, re-integration of children into mainstream education, and extra-curricular activities; and third, we initiated the amendments to the Public Educational Act as follows: provided clear definitions of the disadvantaged situation and integrated education, extended the compulsory school age from 16 to 18), inserted provisions on pre-school education, offered free meals for disadvantaged children and instituted compulsory enrollment of disadvantaged children

Q: So you switched the incentives from catch-up programs to integration programs?

V.M.: Yes. We wanted to be as quick as possible. Knowing the fact that 94 percent of the population opposes integrated classes, we knew exactly that for this kind of issue if we began by communicating this to society it would not work. At that time I thought it should be more difficult to get a majority vote in the Hungarian Parliament. We argued that this is a human rights violation, and nobody opposed the amendment. We proposed eleven new paragraphs on desegregation to be included in the public education act. They were about prohibition of segregation and on integration. The clause proclaiming that segregation is illegal was the main issue. That was the main point and is a historic change. This was at the time when Hungary was joining the EU, and we had to focus on equal treatment and to create an equal treatment act. Those eleven paragraphs were added to the equal treatment law adopted one year later.

Q: Is segregation defined in the law as segregation of Roma or segregation of multiply disadvantaged?

V.M.: Disadvantaged, not Roma. Segregation as a legal definition is not based on ethnicity, but on the socio-economic status.

Q: In practice, is segregation in Hungary based on ethnicity or on socio-economic status?

VM.: This is a very difficult question. I tend to say that it is because of discrimination based on ethnicity that we have such a situation in education. But at the same time, we can find ones in segregated classes and schools

who are not Romani. In the legal term, you have to define as clear as possible: Hungary has more research on socio-economic status, so it is easier to prove in the courts, then the one-third self-identification of Roma. At the same time, it's true that if we fail to focus on the root of the problem, then we are not solving the problem. That is why it is very difficult to combine those two aspects, while it is very simple: How the growing number of Romani children classified as mentally disabled can be explained?

Q: Some Romani parents intentionally send their children to integrated schools. So now if you had, let's say, the possibility to review the law, to change the public education act, would you change it so that it makes a reference to ethnicity or would you leave it as it is?

V.M.: I don't know...

I.: How did school authorities and local authorities react to the changes and initiatives that you promoted?

V.M.: Several thousand teachers attended a forum at which I introduced the new changes in the reform. "Who is this Gypsy girl, who wants to change the whole system and practice that we have had here in the village?" they said or thought. Nearly all of them opposed the proposed changes. The historical change is that now everybody knows more or less that segregation is illegal. Now I only hope that the new government will not take out those eleven paragraphs banning segregation.

Q: How did Roma, Romani parents react to these changes that you promoted?

V.M.: I received feedback from parents when I visited families to communicate the reform. When I went to the Beash community, they all supported me, when I went to the Lovari community it was the same. When I went to the Romungro community they said, "She is our person!" They all understood the problem, and that the quality of education is unacceptable in ghetto schools. Of course, large changes never take place smoothly. When we start the desegregation process, due to initial difficulties, some negative effects on the children are nearly unavoidable. In the first year, in the second year, but in the long run, this is the future for the Romani community. This is my mission.

Q: What are the main obstacles to desegregating the education system in Hungary? Is it the public opinion that opposes desegregation, or is it a matter of human resources, expertise to do the thing, or money from the government?

V.M.: The most important obstacle is discrimination, although discrimination is prohibited in law. Widespread prejudices towards Roma obstruct any intervention. I don't believe in changing the minds of the

people with a tolerance program, irrespective of the money invested. Money cannot change the minds of people. EU money has not been spent as municipalities were not applying for integration programs because even if there is available money, non-Roma don't like to be integrated with Gypsy children. They don't like to have Roma integrated because they think that Romani children will beat non-Roma if they sit next to each other, and, generally, it is a risk to their own personal life. As I stated earlier, it should be an education reform, which goes through all the system from kindergarten through the university level, and it must contain clear measures and funding.

Q: Where do problems of this kind appear in a more visible way? Regional level, local level? At the central level this issue was somehow accepted: you had the law, you had the budget.

V.M.: Segregation exists in Budapest and everywhere, not only in the countryside. It is not only a local, regional or county level problem, it is the same shame everywhere. It is a widespread phenomenon. Everywhere, there is prejudice and there are intolerant people here in the capital city and in the countryside.

Q: You said that discrimination and changing attitudes were the most important factors in promoting desegregation. How does this influence your work?

V.M.: Of all the initiatives we had, almost none were really successful. When, despite the prohibition, instances of segregation are identified, complaints should be made. If schools/municipalities fail to observe the law, we have to force them to observe it if we believe in the equality of rights. And if some do not like it, one day, I hope, they will learn to observe the law. It is a little like the tax law: if you are getting a salary, whether you like it or not, you have to pay tax. After some time, I believe, it becomes normal, natural that we Roma came to be seen as different members of society, who need to have special education.

Desegregation is a new issue in the Hungarian society, so many interests are opposing it of course, and it will be very difficult to achieve a full-scale success. Only by enforcement, by filing complaints in cases when the law is not observed will we achieve full equality of rights. Like the black people who achieved such rights for their children, having the *Brown* case and other cases challenging discrimination in the United States.

Q: Due to the Public Education Act and also the provisions of the Equal Treatment Act, there have been a number of desegregation cases. How do you think these cases help the promotion of desegregation? How successful were these cases?

V.M.: The following experience I had during my work in the Ministry of Education is very relevant: a ministerial decree, a judicial order might contradict the provisions of the anti-discrimination law, so the Romani students continued facing discrimination at the level of educational daily practice. This says a lot about the respect for law when segregation is at stake.

In education, the consequences of poverty and low educational levels appear as ethnic-minority peculiarities. So the ethnic affiliation sends a child with a higher probability to a lower level education service, causing a serious discriminatory situation. This is unfair and should not happen.

My sister, Erzsébet Mohácsi guides an organization (Chance for Children Foundation—CFCF) that takes “segregation type” cases to the court. I think I am not mistaken if I say, as many cases were filed, so many kinds of sentences were passed. CFCF is an important actor in desegregation. Even if they have good results, it’s not taking precedence over those who wish to maintain segregation in the country. However, desegregation effects positively on those cities, towns where legal actions were/are taken (Miskolc, Szeged, Jászladány, Nyíregyháza, Hajdúhadház, Kerepes, Csörög, Taktaharkány, Budapest, Tiszavasvári, etc.). Powerful PR is needed to communicate the positive results of desegregation, the protection of children’s rights and not to let the public become confused about the social and other problems of Roma.

But what is mostly needed is a focus on the child’s interest: in case of special schools or segregated schools, if you take a child who is in the sixth grade or younger, you may still have the chance to improve the situation and the prospects of that child. But when a child is in the eighth grade, there is no chance to continue education and to have a successful career in the future. That is the reason why it is vitally important to have legal actions taken by civil activists. Only courts can make immediate change. I know, in this situation the local societies are disturbed by different interest groups.

Q: What do you think about the role of the judiciary in deciding on desegregation cases? Can they promote desegregation?

V.M.: Good judgments definitely have great impact. Unfortunately, this did not happen in many cases. For example, twelve children who had previously been classified as mentally disabled, and thus placed in special education from all around the country, were re-examined. They had excellent results. The defense lawyers recommended selecting only excellent students to secure a victory in the court. Still, we lost. They were declared incapable of studying at mainstream schools, and the court established

that nobody had made a mistake when classifying them as mentally disabled.

Q: But in June the court awarded...

V.M.: One million forints, the first instance a court ruled that there was discrimination and that there had been segregation, which is an illegal practice. It was a really favorable decision. Then, of course, the school appealed and we lost the case. The second instance ruled that there had been no discrimination. In the first instance we won because one of the representatives of local authorities forgot to file an appeal. The amount of one million forints,¹ nevertheless, was awarded. The media communicated this as a positive development, because the plaintiffs received money, but, in my view, it was not so positive. Even the journalists did not understand this situation. So we have to continue to raise awareness of what segregation means, why it is good to desegregate our children, etc. And to have positive judgments, like in the Ostrava case, the Orsus and Sampanis cases decided by the European Court of Human Rights.

Q: What is the current state of affairs in terms of desegregation, what has or has not been achieved?

V.M.: The existing system is such that those who are part of it are not motivated to change it. They do close to nothing to cut the number of children in the system of special education and in the area of segregated schools with the extra head quota system. The fact that desegregation as a notion has not only emerged in the public perception but also has made quite a noise in practice is in itself of historic significance.

Q: Now that we have the amended version of the law of 2002, it seems that there is a tool which could be used to fight segregation. Then there is the so-called integration plan which local authorities and schools have to elaborate in order to be eligible to apply for structural funds. Have these new tools brought about any change?

V.M.: The tools have been in place, indeed. However, as I mentioned before, the money available for desegregation has remained unused, nobody applied for it. The socialists said we have to force local governments to pursue integration. For example, when municipalities apply for EU funds asking to support a development plan to build a new infrastructure in the town, usually they leave out the Romani community, so there is no development in the Romani community. This often affects such vital areas as housing, education, employment, health care. As a condition for funding, the socialists imposed the inclusion of Roma as part of the integration

¹ Approximately €3,700.

development plan of the municipality. My conclusion is that, unfortunately, this is not about money. Even if they receive billions of forints, they will not start liking Roma.

Q: Did you have an opportunity to lobby for the desegregation issue in the European Parliament?

V.M.: Yes. As an MEP, between 2004 and 2009, I did everything to have the issues of segregation, desegregation, Roma integration, housing, and others included in various EP resolutions. During my mandate I initiated nine, in which we included two or three paragraphs on segregation in education in each ones. Each time, we wanted to have a paragraph or more on issues relevant to Roma included in various resolutions, which required intense lobbying.

Q: Have other organizations and donors reacted to the issue of desegregation?

V.M.: Firstly, I would mention here the Open Society Institute and Roma Education Fund because we were working together on these issues. Also, the UN Minority Forum which was set up under the auspices of the Human Rights Council. The first session of the UN Minority Forum focused on the question of equal access to quality education of pupils participated in minority education. I had the honor to chair that session. We had a good, interesting debate.

Q: What are the lessons learned in the fight against desegregation?

V.M.: We have to work more, and to do a large-scale dissemination. We have to make people understand that segregation is a human rights violation against our children which leads to unsuccessful lives. That is why I was very happy when you called me and told about this book. I would like to see desegregation happen, therefore, to make my contribution by sharing my knowledge and experience. It is not a simple action, we would be very naive if we thought that minority education may solve our problem. This should become a large-scale movement. I myself called my organization Movement for Desegregation Foundation, because it has to be a movement led by Romani people in cooperation with non-Romani activists, human rights activists, non-Roma, teachers, policy-makers, everybody.

Q: What is your vision of desegregation in Hungary and also at the European level?

V.M.: I would quote here Martin Luther King's famous saying: "I have a dream." In this context, the dream is about the same quality education for all, but it seems that today it is only a dream. But I do hope that it will not remain a dream for ever.

Q: My last question: where do you see the desegregation issue in the medium term in Hungary and Europe?

V.M.: Because the political climate keeps changing in Hungary, but also in Europe, the issue of desegregation is at risk. It is vital for NGOs, policy makers and politicians themselves to keep this issue on the agenda.

Roma School Desegregation Policies in Hungary¹

ORSOLYA SZENDREY

Introduction: The Educational Gap between Roma and the Majority

The Hungarian public education system does not provide equal opportunities irrespective of race or cultural background. Moreover, the educational system is extremely selective: higher status families choose the schools that best suit them, and higher status schools choose the most desirable children and quickly shed the less privileged ones. The largest differences between the schooling success of children of higher status families and that of the most disadvantaged pupils, and Roma children in particular, are witnessed in the wide gap between the educational levels of the Roma and the Hungarian average. This is the main cause of the desperate labor market position and the complexity of social problems of Roma in Hungary.

The most recent data on the educational status of Roma children in Hungary was gathered by the Ministry of Education in the school year 1992–1993. After the Hungarian data protection law entered into force, official registers of the ethnic origins of students in Hungarian schools were eliminated. As a result, a number of studies on Roma in the Hungarian educational system carried out in the years following 1993 were largely based on estimates.

¹ The mandate of the author was to provide an overview of the policy measures implemented in Hungary during the last ten years, aiming at the elimination of segregation and promotion of equal opportunities in education for Roma children. Due to the limited extension of the study it does not deal with the pedagogical, methodological substance of the programs and deeper and comprehensive analysis of the impact of each policy measure can not be included either. It was the intention of the author to give a broad overview of the integration policy framework and the issues they address, and to draw a few conclusions regarding the outcomes, obstacles and the future challenges of the program.

In 1994, the most significant representative sociological survey by István Kemény, Gábor Havas, and Gábor Kertesi showed that only 1.5 percent of Roma children continued on to high schools and only about 0.2 percent reached a post-secondary level of education.² If we compare these numbers with the findings of Kemény's similar survey from 1971, we can conclude that the education level of the Roma in Hungary increased significantly during these two decades, as in 1971, 87 percent of Roma did not finish primary school, only 0.5 percent finished high school. The elimination of illiteracy and the major increase in the school attendance of the Roma population on primary level was a significant improvement; nevertheless the gap between Roma and non-Roma was further deepened with the general expansion of secondary and tertiary level education in the 1990s.

Research performed in 2000 by the Oktatáskutató Intézet (Education Research Institute) found that the persistent gap between Roma and non-Roma pupils in secondary education further widened over the past decade. During the economic transition following the change of the political regime, vocational training suffered a loss in significance, but still remained the school type most accessible for Roma students.

One basic problem of the vocational training provided for disadvantaged, mainly Roma, children is that these children are frequently taught vocational skills that do not provide real labor market opportunities. Moreover, the drop-out rate is extremely high in vocational training schools, which affects the greatest number of disadvantaged children. The majority of Roma students continuing their studies in vocational training schools leave before they obtain a vocational certificate. According to a 2001 survey by prominent sociologist Ilona Liskó on the education of Roma students in secondary schools, in the examined schools the 36 percent of Roma students dropped out in the ninth grade and 29 percent in tenth grade, while these figures were ten and seven percent among non-Roma.

According to official education statistics, currently about 80 percent of Hungarian children continue their studies in secondary schools, which provide for matriculation. Although this figure for Roma children is about 50 percent,³ eventually less than half of these students obtain matricula-

² Hungarian Academy of Sciences, *Beszámoló a magyarországi roma (cigány) népesség helyzetével foglalkozó 1993 októbere és 1994 februárja között végzett kutatásról*.

³ According to calculation based on the education statistics by researchers Gábor Kertesi and Gábor Kézdi, in 2003 only 14 percent of Roma children continued their studies in secondary schools which provide for matriculation, while this figure was 80 percent in the total population. See Gábor Kertesi, Gábor Kézdi: *A Hátrányos helyzetű és roma fiatalok eljuttatása az érettségizéshez*.

tion.⁴ The longitudinal research on the secondary school performance of children between 2006 and 2009 revealed the fact that the secondary school career of Roma has not improved significantly in the last ten years.⁵ According to the survey 7–8 percent of the Roma students do not continue their studies on secondary level, while this figure is less than one percent among non-Roma. Moreover, “Three and half years after finishing eighth grade, ninety per cent of the children are in school, three quarters on the continuous track in twelfth grade. The corresponding figures for Roma children are only 60 and 40 per cent, respectively. Drop outs and grade retentions are especially frequent in vocational training schools and evening schools; quite a few students switch between tracks; and drop-outs and evening school students do not have a second chance on the regular track.”

There are also serious deficiencies with the post-school vocational system: while the number of uneducated youth and adults remains high in Hungary, insufficient attention is paid to training forms which support these people. Second chance programs, which are run throughout Western Europe with success, have not reached the great majority of early school leavers in Hungary.

The number of students in higher education has rapidly increased in Hungary during the last decade; nevertheless the participation of Roma in tertiary education is still about two percent.⁶ This situation exists due to opportunity differences for entrance into secondary schools which provide for matriculation. Since Roma children matriculate still in small numbers, only a few continue on to higher education.

Inequality Deriving from Intense Selection in the Hungarian Educational System

The prominent Program for International Student Assessment (PISA)⁷ surveys highlighted the fact that the Hungarian educational system provides the fewest opportunities for children of poor families and of parents with lower education among the surveyed OECD countries (OECD PISA, 2000, 2003, 2006, 2009). Among all groups of disadvantaged children, the most vulnerable are Roma children. According to the 2000 PISA survey, a

⁴ Kertesi and Kézdi “Iskolázatlan szülők gyermekei és roma fiatalok a középiskolában.”

⁵ Ibid. 4.

⁶ Kóczé, “Roma hallgatók a felsőoktatásban.”

⁷ This study of fifteen year old students is conducted by the Organisation for Economic Co-operation and Development.

Roma child is fifty times less likely to complete secondary level education compared to a non-Roma peer from an average social background. These children do not have equal opportunities to obtain the qualifications that would later enable them to lead successful lives in society. According to the PISA 2000 analyses, learners' performance in the Hungarian educational system is much more affected by socio-economical background than the OECD average. Hungary had the highest values on this scale, which means that the public education system provides the least equality of chances for children from families with lower education, fewer cultural advantages, and worse financial position.⁸

This situation derives from the drastic "contextual effect" of the education system, i.e., the socio-economical status of the school (the average status of the students) contributes more to the school achievements of the students, than their family background.

The intense selectivity of the Hungarian school system is shown by the fact that while in OECD countries the 36 percent of differences in reading achievements could be explained by the differences among schools, this proportion was 71 percent in Hungary according to the 2000 survey.

In the Hungarian educational system the differences between the performances of individual schools are remarkable, and simultaneously, local disadvantages are also predominant.

The majority of the Roma communities in Hungary live in the poorest regions in the country, in small and economically less developed settlements. The quality of education varies from school to school, depending significantly on the social and economic status of the settlement. General educational and material conditions are well below average in schools located in small villages in the poorest regions.

According to a research conducted by Delphoi Consulting,⁹ more than one quarter of the schools with a considerable percentage of Roma children (above 8.5 percent) are located in small settlements with a population below 1,000 people, while about 20 percent of these schools can be found in cities with a population over 10,000 people. With respect to the size of the schools, the research found that the majority of Roma children are educated in relatively small-size schools with a student body of between 120 and 200 students. The small-size schools are located in smaller towns and villages. According to Delphoi, the majority of the Roma children

⁸ Vári, *Gyorsjelentés a PISA 2000 vizsgálatról*.

⁹ Babusik, *Survey of Elementary Schools Educating Romani Children*.

attend schools on the outskirts of towns and cities and in smaller towns and villages. The proportions of combined classes, temporary classrooms, and unqualified teachers are remarkably high in these schools, and under these circumstances the provision of training and educational tasks requiring greater efficiency seems beyond hope.¹⁰

Another important factor of access to quality education services for Roma is the availability of kindergartens. The 2002 survey of Gábor Havas found that there is no kindergarten in at least 35–40 villages where more than 20 kindergarten age children live. The problem of limited number of spaces in kindergartens is the worst in Borsod, Szabolcs and Baranya counties, where most of the Roma live. Still about 2,000 spaces are missing, that many 3–6 years old children cannot access kindergarten, which affects Roma children the most, who live in the poorest settlements. Therefore we can conclude that inequality deriving from differences in the availability of educational services among settlements also has a negative effect and limits the educational opportunities of Roma children.

Beside the disadvantages deriving from the quality differences of available education services, the inequality of opportunity for Roma children is mainly shaped by the intensive selectivity in the whole of the Hungarian educational system based on local educational organization practices, which result in segregation. This segregation in Hungary's educational system has contributed further to the isolation and marginalization of the Roma population.

The Nature of Segregation in the Hungarian Education System

Selectivity resulted in various forms of segregation of Roma children in the Hungarian school system. The main forms of segregation are the so-called Gypsy schools, where the majority of students are Roma, the organization of "Gypsy classes" within normal schools, and the systematic channelling of Roma students into special schools for mentally disabled students.

A survey¹¹ conducted in the 2003–2004 school year showed that there were 178 primary schools in Hungary in which the majority of students were Roma (and over 40 percent of the Roma primary school students attend these schools). Most of these Roma schools did not evolve only as

¹⁰ Kertesi and Kézdi, *Cigány tanulók az általános iskolában*.

¹¹ Havas, "Szegregáció a roma tanulók általános iskolai oktatásában."

a result of the spontaneous segregation of the settlement,¹² but the choices of the more privileged parents and the decisions of local authorities. In those schools where the proportion of Roma students is higher than the average, the standards of education are lower than average: worse human resources (e.g., more lessons taught by unqualified teachers) and material conditions.¹³ The quality of education in the segregated schools inevitably drops as a result of the decline in the number of students attending the school, since less children means less per capita state support for the institution. Furthermore the survey confirmed that the more segregated a school is, the more expensive the education gets, while these schools are usually in smaller settlements in the most deprived regions of Hungary. Gábor Kertesi and Gábor Kézdi also found that as the proportion of Roma children grow in a school, the quality of education services provided for these children will decrease inevitably, due to the fact that it is harder to recruit and keep skilled and motivated teachers in such schools and provide the same level of services among worse infrastructural and technical conditions.¹⁴ The researchers reemphasized in their 2004 study that from a certain point of view segregation means the cumulation of educational problems within one school or class, which will inevitably result in reduced quality of education services provided for the students in that particular school or class.¹⁵ The other important factor behind worse educational achievements in a homogenous class or school is the peer influence, as the expectations of the other students in the class have significant impact on the motivation and success of the disadvantaged children. Therefore the futures of the Roma students in these segregated schools are predetermined. The lower quality of education and lower achievement results in high unemployment of the Roma population in the long term.

According to the 2004 survey there were at least 3,000 classes in Hungarian primary schools where the majority of students were Roma, and at least 1,253 homogeneous Roma classes operated. Approximately one-

¹² Residential segregation also contributed to the evolution of segregated schools by the following demographic processes: in the poorest regions the proportion of the Roma residents gradually grew in those settlements which were unable to offer employment opportunities and quality services, therefore the higher status families gradually left the settlements and Roma bought the abandoned properties for low prices.

¹³ Havas et al. "Cigány gyerekek az általános iskolában. Oktatókutatató Intézet."

¹⁴ Kertesi and Kézdi, "Cigány tanulók az általános iskolában. Helyzetfelmérés és egy cigány oktatási koncepció vázlata."

¹⁵ Kertesi and Kézdi, "Általános iskolai szegregáció, I. rész. Okok és következmények."

fourth of the Roma students attended classes in which the majority of students were Roma.

The main factors behind these segregated classes are: (1) the prejudice of local mainstream society is intense throughout the country, which puts pressure on school administrators and local decision makers to find ways to separate Roma and the multiply disadvantaged from the middle-class children; (2) the revealing underachievement of disadvantaged children in primary school due to their absence from kindergarten and no access to effective early-childhood development services; and (3) the teachers are not trained in inclusive methodology, differentiating and development pedagogy, and therefore are not prepared to teach heterogeneous classes effectively.

Special schools and classes

Statistics also show that while only 3.6 percent of the total population of primary school age children go to remedial classes, about 18–20 percent of Roma children are educated in such classes. According to an earlier survey of the special remedial schools by Ladányi, Csanádi and Gerő, these institutions are used for the segregation of those disadvantaged, and primarily Roma students, who could be educated in integrated classes effectively. The survey showed that through the 1990s a Roma child was ten times more likely to be sent to a special school than a non-Roma as a result of systematic discrimination.¹⁶

Sándor Loss examined in 1998 the process by which Roma children were transferred into special schools in Borsod-Abaúj-Zemplén county, and registered the following main features of these discriminatory practices.¹⁷ According to Loss, it was obvious that decisions to transfer children were motivated by the institutional interests of the special schools. The special school system of the county was not organized according to real demands, therefore the decision making Expert Committees usually helped to fill up the schools with pupils. (Both the Expert Committees and the schools are still maintained by the county self-governments in Hungary). Loss also found that the schools rarely provided any assistance for preparation, e.g., tutoring for those students who are in danger of being transferred to the special school, instead they intended to get rid of these

¹⁶ Csanádi and Ladányi, *Beszámoló a "Kisegítő iskolások nyomkövetéses vizsgálata" című kutatásról*.

¹⁷ Loss, "Út a kisegítő iskolába," 370.

“problematic” students. 90 percent of the transferred children were Roma, whose parents were under-educated and poor and had no means to enforce their rights and interests.

The examinations of the Expert Committees were routine: they only saw the children on one occasion and did not use appropriate evaluation tools (as for example there were no standardized tests in use, which could efficiently examine children from different cultural and social backgrounds) The reasons for the school failure of the individual students were never explored and neither the parents nor the teachers were involved in the examination process. Since there were no re-examination of the children in several cases, there was no chance for the transferred children to get back into a normal school. The survey also concluded that it was a general problem that early child development methods were not part of the teacher training curricula and that the school failure of the children were due to the fact that they did not attend kindergarten regularly and that the teachers were not prepared and not motivated to cope with the knowledge and language deficiencies they brought to school. The office of the Minority Ombudsman, Jenő Kaltenbach, conducted a comprehensive survey on the minority education system in 1999, and their findings reaffirmed the conclusions of the former sociological surveys regarding the remedial (special) education, and the low quality education and segregation of Roma.¹⁸

Besides the vicious financial incentives for segregation of Roma children in separate classes and remedial schools, and the widespread prejudice against Roma on behalf of different stakeholders (members of Expert Committees, school maintainer municipalities, teaching staff, parents), another important reason for segregation is the inefficient preparation of kindergarten age children for school. Gábor Kertesi and Gábor Kézdi presented in their 2008 report the differences between the kindergarten attendance of the children of educated middle class parents and uneducated parents. According to the survey the more educated are the Hungarian parents, the longer their children go to kindergarten. That is at least 3 years for about 90 percent of the children of middle class families. On the other hand among the multiply disadvantaged children of mother with maximum eight grade, this figure is 70 percent, and 50 percent among those children, whose mother finished maximum seven grades.¹⁹

¹⁸ Kaltenbach, “Cigány konfliktusok és integrációs esélyek,” 96.

¹⁹ Kézdi and Kertesi “Az óvodáztatás hatása a tanulói kompetenciákra és az óvodai ellátottság Magyarországon.”

Private students

A specific form of segregation in Hungary is the “private student status” arrangement granted by the schools. The great majority of private students in Hungary are multiply disadvantaged, and mostly Roma, notwithstanding that this status was created for prominently talented pupils and those with serious health problems unable to go to school daily. According to the 2002 survey of Gábor Havas Gábor, Ilona Liskó and István Kemény,²⁰ in the examined 198 schools, three percent of Roma students were absolved of attending school regularly, while this proportion was 0.4 percent among non-Roma. In principle, according to the former regulation, parents would apply for the private student status for their children. Yet in practice, typically the school initiated the private student designation process. According to the Havas-Kemény- Liskó survey that includes those who (1) have behavioral problems, (2) health problems (or are pregnant), (3) are overage, and (4) go to work at a young age. According to the survey, Roma students are twice as likely to be assigned as private students for behavioral problems. The private student study scheme does not involve school attendance, but instead relies on home study. This had a profound impact on many Roma students, who in many cases were entirely excluded from getting education. Since these students are still expected to take final examinations without having attended school, many drop out of school entirely. These vulnerable students leave the education system without obtaining any qualifications or even the most basic skills.

External and internal criticism for segregation

Human rights bodies of several international governmental organisations (OSCE High Commissioner on National Minorities, European Commission Against Racism and Intolerance—ECRI—the UN Committee for the Elimination of all Forms of Racial Discrimination—CERD—the Council of Europe), as well as international and domestic NGOs (Human Rights Watch, Amnesty International, the International Helsinki Committee for Human Rights, the European Roma Rights Center, Save the Children and many others) have criticised Hungary on several occasions and in numer-

²⁰ Havas et al, *Cigány gyerekek az általános iskolában*, 167.

ous reports²¹ for the unjustified separation of Roma children, which has been a feature of Hungary for decades and has contributed much to the desperate situation of Roma communities in the country.

Besides outside critics, a few domestic NGOs also reported cases of discrimination and segregation to challenge the situation, including the Legal Defense Bureau of the National and Ethnic Minorities (NEKI) and the Hungarian Helsinki Committee. Furthermore those democratic institutions which were created to represent and enforce the interests of Hungarian minorities (like the Office of the National and Ethnic Minorities and the Parliamentary Commissioner for Minorities—the so-called Minority Ombudsman) following the political change in 1990, also started to lift up their voices regarding the social exclusion of Roma. Minority Ombudsman Jenő Kaltenbach initiated investigations and issued several reports to urge governments to put segregation of Roma on their political agenda. In his official reports the Ombudsman criticised the discriminatory practices against Roma students in Hungary and claimed that these practices violate the UNESCO treaty against discrimination in education, to which Hungary is party since 1964.²² Also through these years, cases of discrimination in education against Roma have been reported in the Hungarian media on several occasions.

As an EU candidate state, Hungary was further obliged to respect human rights as a condition of EU membership, part of the political criteria

²¹ Among others:

Report of the OSCE High Commissioner on National Minorities to Session 3 (Roma and Sinti) of the Human Dimension Section of the Review Conference. Vienna, 22 Sept. 1999.

European Commission Against Racism and Intolerance (ECRI): *Second Report on Hungary.* 18 June 1999.

International Convention on the Elimination of all Forms of Racial Discrimination Thirteenth periodic reports of States parties due in 1994: Hungary. 17 March 1995.

UN Commission on Human Rights: *Prevention of Discrimination against and the Protection of Minorities. The human rights problems and protections of the Roma.* 23 June 2000.

Commission on Human Rights: *Racism, Racial Discrimination, Xenophobia and all Forms of Racial Discrimination: Mission to Hungary, Czech Republic and Romania (Dominique Rosenberg, 19–30 September 1999).*

Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination on Hungary's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 2002.)

²² Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről (2000, 2001, 2002).

established by the Copenhagen European Council. Hungary was also under the obligation to adopt the EU anti-discrimination measures. Each Comprehensive monitoring report on Hungary's preparation for EU membership from 1997 formulated serious concerns regarding the situation of Roma in Hungary, and urged the adoption of efficient anti-discrimination provisions and implementation of effective measures to eliminate the segregation of Roma children in education, and discrimination against Roma in employment and access to public services. The accession process of Hungary created a unique opportunity to put pressure on the political elite to show up relevant measures to promote the integration of Roma.

Concepts on Education for Roma

1990–2002

A few years after the end of the communist regime in Hungary (1989), the promotion of Roma integration was on the political agenda and the improvement of Roma education was a priority goal of education policy. From 1994, official politics paid particular attention and elaborated mid-term and long-term strategies, and allegedly spent huge funds from the central budget, and several million euros from PHARE support. The first mid-term governmental measures were adopted in 1997, the next governmental strategy followed in 1999, and at last in 2004 new mid-term measures were elaborated in order to promote the social integration of the Roma.

Nevertheless, surveys proved that there were no significant results and the situation had not changed much during that period. Moreover the educational gap between Roma and the majority widened further (regarding secondary education the difference between Roma and the national average grew with 27 percent between 1993 and 2003)²³ as well as the selectivity of the education system. That time the improvement of living conditions were more in focus in the Roma integration strategies rather than their segregation within the Hungarian institutions and in the settlements, and these strategies were implemented with minor results in practice.

The approach of official education policy towards Roma education after 1994 had two main pillars:

²³ Kertesi and Kézdi, "A Hátrányos helyzetű és roma fiatalok eljuttatása az érettségihez."

- a) Roma children are not successful in schools, so it is best to focus on combating disadvantages so Roma children can “catch-up with the majority.”
- b) Hungarian Roma have special rights to practice and learn their culture and language, as ratified in the Hungarian constitution, in international treaties, and in the 1994 Hungarian Minority Rights Act, therefore the education system should guarantee the enjoyment of these rights.²⁴

On the basis of the Act on Self-Governments, the same amount of supplementary per capita support was offered for those Roma children who took part in “catch-up programs” in any kindergarten or primary school as for the national minority students at minority schools. At first, basic catch-up programs were organised for Roma, but as a result of the pressure from Roma organisations, cultural elements became part of the recommended educational program following the development of the National Core Curriculum in 1996.

Initially only a few education institutions applied for supplementary per capita support, but later on, more and more schools started to use the extra funds.

By 2002 about 250 kindergartens and 500 schools organised Roma minority education, motivated by the 30 percent more funds, and over 20,000 kindergarten children and 50,000 students took part. It is not difficult to draw the conclusion that the catch-up programs resulted in separate classes organised for Roma on an ethnic basis. This way the incentives for Roma minority programs supported the segregation of Roma children in kindergartens and in primary schools.

The most remarkable phenomenon of discrimination, which violates the basic rights of Roma children and their parents, was the usual practice of schools to force the Roma children into separate classes. These segregated classes did not offer any additional knowledge on minority culture or language. The major problem with the whole concept and funding scheme was that two target areas were mixed—support for Roma to practice their minority culture and reinforce their identity, and the promotion of educational opportunities for disadvantaged children to “catch-up” with

²⁴ The Minority Rights Act provided the same right to Roma as other national minorities: to learn their language and culture, to organise kindergartens and schools for Roma minority education, to compensate for disadvantages in education and to catch-up, and to eliminate direct and indirect discrimination against Roma.

the majority. These two tasks differ in many ways, with distinct goals, target groups, and tools of implementation. The two policy tasks should have been fulfilled with separate policies. Further, the later should not have been ethnicized and restricted to Roma, as the most disadvantaged non-Roma students are also in need of extra educational support and should have been targeted by the program on an equal footing. A notable academic Katalin Forray²⁵ saw the following problems with Roma minority education:

- The focus of the Roma minority education is the elimination of disadvantages, instead of teaching minority languages and cultural heritage.
- While other national minorities can study in several minority education institutions, only one institution was created for Roma (Gandhi Foundation High School) and there were no professional debate on this question.
- Knowledge of Roma culture and history were not incorporated in the curricula and in the teaching materials until the end of the decade.
- The two languages of the Hungarian Roma (Romani/Lovári and Beash/Beás) were just being standardised, but there were no teachers prepared to teach these languages.
- The role of the Roma minority self-governments in designing, organizing and controlling Roma minority education is contingent and unclear. Neither the professional nor the material and legal conditions of their operation are ensured to fulfill the tasks dedicated to them on the basis of the Minority Rights Act.

Moreover, in practice, the extra funding for the special minority education program by the school administration were put in the overall budget of the self-government and frequently used for different purposes (not necessarily on education), and were certainly not spent according to the intentions of the government to provide better conditions and extra services for Roma children. Since there was no systematic monitoring to follow up on how the extra funds were spent and how efficient the programs were, the misuse of these funds continued until the funding scheme was changed in 2003. It can be concluded that this education policy did

²⁵ Forray, “Cigány kisebbségi oktatáspolitiká.”

not serve the interests of Roma children, but provided a legal opportunity with financial incentive to enhance their segregation.

Researchers and academics pointed out that governmental measures of the 1990s did not have significant results and did not change the status quo regarding the segregation of Roma students. Péter Radó, one of the most influential experts in education policy, concluded in his 1997 report on the education of Roma children²⁶ that segregation was a result of the prejudice of the majority society, since they take their children to another school if the number of Roma students increase. They also have better migration opportunities, which increased the proportion of Roma in the deprived regions of the country where unemployment was the highest. Also, Roma have migrated into the evolving ghettos of bigger cities, where the number of Roma students and the number of schools with Roma majority increased significantly.

During the 1990s, the most significant policy initiative, which had visible results were the initiation of scholarship programs for Roma youth studying in higher education, and the establishment of the Gandhi Foundation School for talented Roma students who continue their studies at the secondary level. State scholarship programs have been available in Hungary for Roma university students since the 1990s. In addition, scholarship and tutoring programs were run by several foundations (like the European Roma Rights Center, Romaversitas, the Kurt Lewin Foundation, the Open Society Institute, and later the Roma Education Fund), and zero year programs were also organized for Roma in three universities (ELTE Teachers's College, Bárczi Gusztáv Remedial Education College, and the Economic University of Budapest). The so-called Romaversitas NGO program has been providing professional support and promoting Roma identity for Roma university students during their studies for fourteen years.

There were also a few local and international NGOs engaged in successful pilot programs in the country. These include the Open Society Institute funded "Step-by-step" experimental program in several schools aimed at the enhancement of equal access for children to education. Other example include the Collegium Martineum, the Cooperative Learning project of the primary school of Nyírtelek, the Don Bosco Vocational School, the Kalyi Jag Roma Vocational School, and the Józsefvárosi Tanoda (an extra-curricular program for young Roma). Although these programs alone could not bring about a real breakthrough, they provided

²⁶ Radó, "Jelentés a magyarországi cigány tanulók oktatásáról."

powerful advocacy and policy tools and impacted subsequent education policy.

The most important governmental program targeting education of Roma was a PHARE program (HU9904-01), which started in 1999 with a total budget of 12.52 million EUR. The program concentrated on three areas: (1) the reduction of the dropout rate of Roma children, (2) the development of training programs and student support systems at the secondary level, and (3) the development of a talent promotion program to enhance the opportunities of disadvantaged children to continue their studies on the tertiary level. The total budget available for the program has been spent, and according to the follow-up monitoring report²⁷ it cannot be considered effective or successful. The report suggests that the beneficiary schools continued the same inefficient and—in several cases—segregated educational practices. According to the report the main lesson of the survey is that PHARE support was the catalyst of any kind of reforms in very rare cases and that schools applied for these funds were not really sensible for the ultimate intentions and goals of the program, they were rather keen to gain extra funding.

It can be concluded that the PHARE funds shared the destiny of the supplementary per capita support available for minority education and the education of children with special needs. As without efficient evaluation and monitoring on the application of these funds, the schools and local authorities, which were in constant financial trouble, did not use the funds in line with the purpose of these programs.

2002–2011

Although a few academics drew attention to the anomaly of the Roma minority education program, education policy makers only started to realise that this policy should be dramatically changed around 2002 when the second social and liberal coalition came into government. The change in the educational policy and funding, was parallel with a delicate transformation in the argumentation of education theory, pedagogy in Hungary.

The attitude towards disadvantages and deficiencies of Roma children in education was pretty much ethnicised during the 1990s which provided pedagogic arguments to back up the above described minority education

²⁷ Jelentés a HU9904-01. számú Phare-program hatásvizsgálata eredményei alapján. Oktatási Minisztérium Alapkezelő Igazgatósága, 2003.

policy. This “Roma pedagogy” concentrated on the differences and deficiencies of Roma children deriving from their family background and socialization. The main idea of this pedagogical paradigm was that those features that make Roma students unsuccessful in education are part of Romani culture, or their non-Hungarian mother tongue, and therefore these should be challenged by education. Several researchers explored the reasons for the school failure of Roma and their findings provided useful arguments to support ‘Roma pedagogy.’ Sociological surveys were conducted on the socialization of Roma children in their families (e.g. Katalin Forray R., István Hegedűs T.) Several other remarkable surveys focused on the language problems of Roma children in schools (e.g. by István Kemény, Aranka Varga, Tibor Derdák), which formed the most important obstacle for their educational success according to the researchers.

The new trend in pedagogy following the 1990s was influenced by the human rights discourse on discrimination in education and segregation of Roma children. The phrasing of the official education policy changed a lot, as well as the new trend of pedagogy: afterwards the emphasis was on the responsibility to provide efficient educational services for the disadvantaged children to be successful in school, and this responsibility was shared among the schools, the teachers and school authorities. The number one challenge was to make education effective for all on an inclusive manner and to improve the quality by developing both the teaching methods and the educational environment.

The second government of the socialist and liberal coalition defined certain goals for that governmental period (2002–2006) in the field of education in its Public Education Program. It included the creation of schools organized around children’s interests, where each child can receive quality education and training in line with their individual needs. Also that more time must be given to the development of the so-called key competencies (like communication skills and abilities that are essential for learning) in order to ensure the smooth acquisition of core skills and abilities. In this type of education, the measure of success is whether a school is able to provide each and every pupil with the opportunity to realize his or her potential.

The first step toward school desegregation taken by the liberal Minister of Education (Bálint Magyar) after the election in 2002 was the creation of the position of the Ministerial Commissioner for the Integration of Disadvantaged and Roma Children. Soon after a Roma rights activist, Viktória Mohácsi was appointed to the post, and the Office of the Ministerial Commissioner started operating with several experts.

Since the Hungarian public education system is decentralised, the role of the central government is limited. Decentralisation in education is built on a system of independent local and county self-governments (who administer kindergartens, local primary schools, remedial schools following special curriculum, and secondary schools) which was created after the political transformation in 1990 (by the Public Education Act in 1993, and the National Core Curriculum in 1996). Although this system makes it easier for individual schools to adjust their services to local needs and expectations, decentralisation makes it difficult to put educational policies and programs into practice and to change the attitudes of Hungarian institutions.

The new anti-discrimination provisions in Hungarian law

The basic condition of fighting segregation effectively was the introduction of anti-discrimination legal provisions in Hungarian law. This major improvement had been achieved by 2004 in two steps. First, the Ministry of Education launched a modification process of the Public Education Act. The main elements (pertaining to desegregation) accepted by the Hungarian parliament in the summer of 2003 included the definition and prohibition of discrimination, indirect discrimination, and segregation. Later the Education Ministry took part in the ratification process and contributed to the draft of the overall anti-discrimination act (Equal Treatment Act). The CXXV Act of 2003 on Equal Treatment and the Promotion of Equal Opportunities, which entered into force on January 1, 2004, has an explicit clause prohibiting segregation (and segregation in education in particular).

The definitions of discrimination and segregation in education were taken from the Public Education Act and are still unchanged and in place. Another remarkable improvement in this field was the establishment of the Equal Treatment Authority with the purpose of investigating individual cases of discrimination and promoting equal opportunity through other (research, communication etc.) activities. The Authority should ensure the operation of adequate sanctioning powers and monitoring of anti-discrimination efforts in Hungary. Nevertheless since the date of its establishment in 2005 the operation of the Authority, have been disappointing in the sense that the Authority have not managed to intervene effectively in any educational segregation case until 2011.

Legal definitions of segregation

Article 10 of the Hungarian Equal Treatment Act defines unlawful segregation as a conduct that separates individuals or groups of individuals from others on the basis of their characteristics as defined in Article 8²⁸ without a reasonable explanation resulting from objective consideration. According to Article 27 (3) and (4) the principle of equal treatment is especially violated if a person or group is

- unlawfully segregated in an educational institution, or in a division, class or group within such an educational institution,
- limited to a care or educational system, or a care, educational system or institution is created or maintained whose standards do not reach accepted professional requirements or do not meet professional rules, and thus do not ensure a reasonably expectable opportunity to prepare for state exams.
- Educational institutions shall not have groups pursuing extracurricular activities, pupil or student societies and other organisations of pupils, students or parents whose objective is discredit, stigmatise or exclude individuals or groups.

According to Article 28 the certain cases which do not violate the principle of equal treatment and thus are exempted from the definition of unlawful segregation:

if the education is only organised for one sex, provided that participation in such an education is voluntary, and will not result in any disadvantages for the participants either, and if the education is based on religion or other ideological conviction, or education for ethnic or other minorities; provided that this does not result in any disadvantage for those participating in such an education, and the education complies with the requirements approved, laid down and subsidized by the state.

²⁸ a) sex, b) racial origin, c) colour, d) nationality, e) national or ethnic origin, f) mother tongue, g) disability, h) state of health, i) religious or ideological conviction, j) political or other opinion, k) family status, l) motherhood (pregnancy) or fatherhood, m) sexual orientation, n) sexual identity, o) age, p) social origin, q) financial status, r) the part-time nature or definite term of the employment relationship or other relationship related to employment, s) the membership of an organization representing employee's interests, t) other status, attribute, or characteristic

The program for the integration of disadvantaged students, especially roma

The legal and financial background of educational integration was created by Decree OM 57/2002 (XI.18) of the Ministry of Education (39/E), which established the per capita allowance for integrated education. This regulation introduced the concept of preparatory training to realize student potential and to integrate in heterogeneous classes. New forms of financial and professional assistance had been designed, which aimed to create opportunities for children with different social and cultural backgrounds to be taught together and to receive the same level of education. The decree did not order schools to implement integration, but it did provide financial support and professional guidance to schools that choose to integrate. This way the designers of the Hungarian policy created a two-sided anti-segregation policy: through the implementation of anti-discrimination measures segregation was prohibited and sanctioned, while at the same time the Education Ministry offered financial incentives and additional services for those who decided to amend their practice. The new integration program was introduced in the 2003–2004 school year. Institutions undertaking new approaches launched integration programs in a concerted manner for children in their first, fifth, and ninth year of education.

According to this decree and the integration program as a whole, those disadvantaged students who had participated in a preparatory training program (usually in separate “catch-up” classes) were eligible to participate in an integration program (which was supported with supplementary per capita allowance). Through the integration program, these students could study in the same class or, when a class was split, in the same group with majority students.

The integration program and thereafter most of the measures of the Education Ministry focused on the social disadvantages, instead of the ethnic minority status of Roma students. The definition of multiply disadvantaged children was intended to cover this group of students through the modification of the Public Education Act in 2002. The multiply disadvantaged children are those pupils, who can benefit from the integration program: those pupils, whose parents attended only elementary school; and whose family is eligible for supplementary family allowance, i.e., they come from an economically disadvantaged environment; or those students who have special needs according to the head of the school. The students who live in the care of the state also belong to this category.

In order to determine the multiply disadvantaged status of their children, parents can sign a declaration (voluntarily) before the public notary of the settlement, in which they affirm that they do not have higher education than primary school.²⁹

Sociological surveys confirmed that, although, only a part of those people who live under the poverty line are Roma in Hungary, the low level of education and the poor economic conditions of the family together are typical of Roma children. Therefore the definition “multiply disadvantaged children” is a useful tool to make the integration supports and programs accessible for the poorest families irrespectively of their ethnicity, while at the same time this definition covers the majority of Roma pupils. Subsequently the Hungarian educational integration program targeted the elimination of segregation of the multiply disadvantaged pupils. This way the ethnic aspect of the segregation of Roma children got out of the scope of the education policy.

The major target areas of the integration program

One target of the integration program was to address the problem in settlements where the migration of more privileged (non-disadvantaged) children to neighboring towns had reached a high-level. The schools in these villages and towns had to expand their “educational offererings” to become more attractive, and (according to the original—very optimistic—expectations by 2008) gradually win back those families who were then seeking “better schools” for their children by incurring significant costs and undertaking daily travel to schools in nearby towns or villages.

The second target area was large villages and towns where disadvantaged children are clustered in one or two schools or classes. A school that is currently providing services to a deprived district must become more attractive within the community in part by changing its district area. By 2008, such schools were required to win over families who seek a wider selection of educational services. This process requires changes in the district areas of other schools as well, so other institutions must gradually start the inclusion of disadvantaged children. Therefore, in many towns integration is not possible, unless the local authority reviews its school policy. The program also relied on the active participation and cooperation of schools run by foundations and churches (if any in the settlement).

²⁹ 20/1997. (II. 13.) Korm. rendelet a közoktatásról szóló 1993. évi LXXIX. tv. végrehajtásáról 12/H §, 7 sz. Melléklet.

The integration per capita support was not designed for those segregated schools where desegregation could not be an option because of the local conditions i.e. in segregated Roma settlements of deprived micro-regions mainly in Borsod, Szabolcs and Baranya counties. In these localities the relevant target was (instead of desegregation) to increase the quality of educational services accessible for Roma children. Since only the per capita support “for the realization of potentials” (which was much less than the integration support) was available for them. Therefore these poor villages were targeted by separate development measures parallel to the integration program.

Financial support for integration

The availability of new funding could considerably improve the financial standing of schools that participate in the program. As of 2003, it was possible to increase the per capita subsidy provided to support the education of Roma children by as much as 50 percent. The amount of financial support laid down in the act on the central budget was HUF 196,000 baseline support per child plus HUF 22,000 minority education support plus HUF 22,000 support for the teaching of “Beás” or Romani languages plus HUF 34,000 support for supplemental preparatory training for integration or HUF 51,000 (HUF 60,000 from 2004) for the integrated education of children. The reason behind the introduction of considerably high supplementary support for the integrated education of Roma was that, as mentioned earlier, diverse surveys confirmed that the more disadvantaged children study in the school, the more their education costs. Moreover, the introduction of these new forms of per capita support established the financial interest of schools and their administrators in integration, rather than maintaining current segregated educational practices. As of September 2003, the supplementary per capita allowance for Roma minority education was available with revised conditions.

Until that date, financial support for Roma minority education provided pursuant to Decree MKM 32/1997 could only be applied exclusively. As of September 2003, these two forms of support could be applied simultaneously. This modification in the regulation shows the change in the attitude towards minority education, that it should be handled separately from the equal opportunity measures aiming at the reduction of opportunity differences caused by social disadvantages, and should only be granted for those schools which offer minority studies and minority language program for the Roma (or other minority) children.

In the 2003–2004 school year, those schools that chose to participate in the integration process and succeeded in the open tender could also receive extra funds from the PHARE Program. Roma community centers (run by local Roma self-governments and NGOs) were also supported from PHARE in order to allow many communities to start coaching, providing academic assistance and other services for disadvantaged children in the form of extracurricular study groups (“tanoda”). Financial support was also available for the development of integrated pedagogical programs in public education institutions, as well as for the launching of “Romology” (Roma minority studies) programs in tertiary education. The Hungarian government’s contribution to these programs was 50 percent; the rest was provided by the European Union.

The National Educational Integration Network

To provide assistance to those schools where integration (desegregation) was needed, the Education Ministry created the National Educational Integration Network. Its development was completed in the first half of 2003. This network, with its headquarters in Budapest and regional coordinators in the six most disadvantaged regions of the country, was responsible for providing coordination and a wide range of professional assistance in education for those schools which implemented integration program. The Education Ministry offered a continuously expanding service package to the institutions and provided guidance through the services of the National Educational Integration Network. This package included integration methods that have proved to be successful in Hungary and abroad, such as the Step-by-Step Programme or other alternative methods tailored to personal needs. The in-service teacher trainings provided by the Network included:

- Differentiated teaching for heterogeneous classrooms
- Co-operative teaching methods
- Project-based learning
- Multicultural pedagogy
- Cultural sensitivity training for teachers
- Partnership building with Roma families

In the beginning, the Integration Network designated forty-five model institutions that have started effective integration programs and committed themselves to disseminate the idea and to share their experiences with

other schools. The schools were selected on a competitive basis. The National Educational Integration Network promoted the improvement of these schools by providing funding for extra educational or other programming needs. As part of the services of the Network regional network coordinators worked together with the schools and Roma micro-regional coordinators helped to bridge the gap between the local Roma community, teachers and administrators. Moreover, the primary schools were encouraged to build intensive cooperation with pre-schools, and secondary schools to facilitate the smooth transition of disadvantaged pupils between the institutions.

In the framework of the Human Resources Development Operational Program (HRDOP) of Hungary's first National Development Plan following EU accession, the Network was expanded with several new schools every year (through a tendering procedure, which ensured open competition). Until 2008 about 270 institutions implemented a development program for integrated education with the support of the Integration Network. Curriculum development for teacher training faculties, in-service teacher trainings, trainings for local decision makers and non-teacher groups on inclusive education, and the sharing of knowledge about inclusive education through several publications and regional workshops for schools were part of the Network activities in the framework of the HRDOP measure between 2004 and 2007.

“From the Last Desk” Program

The Education Ministry also initiated an inter-ministerial program that aimed to decrease the incidence of misplacement of disadvantaged and especially Roma children in special education for the mentally disabled. It was a compelling issue that must have been addressed with a complex program, which could not be successful without the involvement of three key actors, the Education Ministry, the Ministry of Internal Affairs, and the Ministry of Health, Social and Family Affairs.

Experts attributed the continuous rise in the proportion of children classified as disabled to the fact that the per capita funding available to schools for the education of disabled children was constantly growing, which proved to be an effective financial incentive “to create more disabled children” in the education system. For this reason, it was essential to revise the per capita amounts, to develop strict standards for the designation of disabled students to make an end of the misuse of these funds. At the same time it was necessary to ensure funding, so that the expertise

needed for additional academic support and special training could be provided for those students who really needed it (per capita support for children with special educational needs participating in capability development training, 17,000, later 20,000 HUF). It was also essential that inquiries in divisions and classes for disabled students began in the 2003–2004 school year, which aimed to enforce the right to rehabilitation and to monitor the appropriate use of the state subsidy for disabled students. At the same time, the status of children who entered first grade in the 2002–2003 school year and were recommended to study in separate special classes was re-examined in order to prevent the enrollment of non-disabled children in special schools or classes. Following the re-examination, non-disabled children should have been enrolled in classes following a normal curriculum, and the necessary development services supporting the reintegration process were provided by the National Educational Integration Network.

In line with the Public Education Act, Decree 14/1994 (VI.24) of the Ministry of Public Education and Culture (amended in 1999) contained more stringent provisions, which intended to ensure that children are transferred to a school with a special curriculum only if it is justified. For example, the classification as a disabled person must be conducted in compliance with strict medical diagnostic criteria. However, while the generally accepted limit for establishing that a person has a slight mental disability is an IQ of 70, the data of the Committees showed that the upper level at which a person could be deemed to have a disability was an IQ of 86. Stricter enforcement of the medical diagnostic criteria in establishing a slight mental disability was essential. Also the rules used by the Expert and Rehabilitation Committees in diagnosing students had to be changed. Competent personnel had to be present at each assessment according to the new regulations established by the inter-ministerial program. The new provisions also stated that individual cases could be decided only after the student had been observed for an extended period, at least three months. Furthermore the decision of the experts was to be reviewed, *ex officio*, after one year, and then annually until the student reached the age of twelve. Nevertheless, according to the experiences of the National Educational Integration Network and the Education Ministry, due to the heavy workload of the Expert and Rehabilitation Committees, compliance with these provisions was not always complete. In order to change malpractice, these provisions had to be reconsidered and made more stringent, and actual compliance must have been assessed. For this reason the Office of the Ministerial Commissioner initiated a new program element for the

establishment of Unified Pedagogical Diagnosis and Service System in 2005. This initiative was designed to create a professional network of institutions concerned with diagnosis. It is aimed to guarantee the independence of these institutions, the development of their human and material resources, the separation of diagnosis from pedagogical services, as well as to assure that their diagnosis was based on unified protocols and that procedures were continuously monitored and evaluated.

In order to promote integrated education, the Parliament Resolution 100/1999 (XII.10), on the National Programme for the Handicapped, required that special curriculum is developed in the teacher training institutions and in the in-service training programs that prepare teachers for addressing behavioral and learning problems of disabled students in mainstream schools. To this end, tools supporting integration became an essential part of the requirements in the basic and in-service training of teachers. Components supporting integration were also included in the pedagogical development plans of institutions.

Further measures that supported equal opportunities in education

The Public Education Development Strategy was elaborated in 2003. The strategy had been prepared in line with the educational policy recommendations of the European Union, and made the reduction of inequalities in education a high priority.

The chapter of the strategy devoted to inequalities included the following goals: (1) the extension of kindergarten education among children with socially disadvantaged background; (2) the modernization of the system of vocational training schools; (3) the integration of Roma and socially disadvantaged children into mainstream schools, as well as inclusive education of students with special educational needs; and (4) the implementation of anti-discrimination programs.

The strategy provided the basis for numerous measures initiated by the Ministry to promote equal opportunities in education from kindergarten up to tertiary education.

Pre-school education

According to the September 2003 modifications in the kindergarten regulations (§65 of the Public Education Act) it is obligatory to set aside places in the kindergartens for disadvantaged children from the age of

three if the parents request it. As of September 2003 free meals are provided in kindergarten for the children of socially disadvantaged families. Two measures supported the extension of space capacity and the infrastructural development of kindergartens in the disadvantaged regions and settlements (the “21st Century School” program, and the Regional Operative Program 2.3 measure of the first National Development Plan).³⁰

Primary education

From September 2003, first through fourth grade students from socially disadvantaged families are provided with free textbooks. Additionally, fifth through eighth grade students can also receive this benefit from September 2004 onward.

In order to reduce the number of “private students” the §7 of the Public Education Act was made more stringent in 2003.

According to the 2003 modification the definition of “special educational needs”³¹ has been incorporated into the act Public Education Act (§30). Based on this modification, Roma children with special educational needs can be educated together with their peers in integrated classes, and should not be segregated or stigmatized as being mentally disabled.

From September 2004 onward, first through fourth year students can only be condemned to repeat the same class because of frequent absence from classes. The relevance of this measure was that disadvantaged students had been frequently forced to repeat school years because they had failed, which enhanced the risk of drop-outs due to overage and lack of motivation. Experience shows that students could make up their arrears if more time was dedicated to the acquisition of key competencies (in read-

³⁰ Until now about 11 percent of Roma children up to the age of five years old are not enrolled in kindergarten and huge numbers of Roma children have been rejected, because the kindergartens lack space for them.

³¹ The definition of “special educational needs” has been changed on several occasions since 2003 when first defined in the Public Education Act. According to the current definition children, pupils with special education needs are those, who are considered as such by the Expert and Rehabilitation Committees. Article 121 of the Public Education Act defines the following categories:

- a) physical, sensoral, mental, speech disability, autism, multiple disabilities, permanent and serious disorders of the development of the cognitive functions and behavior
 - b) serious disorders of the development of the cognitive functions and behavior
- Before the 2011 modification, category b) named the following disorders: learning disabilities deriving from psychological developmental disorders (e.g. dyslexia, dysgraphia, dyscalculia, mutism, hyperkinetic or activity disorders)

ing and math) and basic skills. Since September 2004, a greater emphasis has been on the teaching of key competencies in the first years of primary school to focus more on the development of individual competencies and basic skills.

The inclusion of multicultural content into Hungarian curricula also began. According to the modified National Core Curriculum, multicultural material was to be integrated into the cultural and history studies. The modified Article 48 of the Public Education Act requires mainstream students be taught about the culture of the local minority. Another modification of the law (32/1997 MKM decree) created an opportunity to study the two native languages of Hungarian Roma: Romani and Beás, in the Hungarian schools. As a result of this modification, thirty schools began teaching the languages during the 2003–2004 school year.

According to the 2003 modification of §95 of the Public Education Act, the program of extracurricular study-groups ('tanoda') was recognized as a successful tool for fostering the school success of disadvantaged children. Extracurricular study groups are widely used in the EU, mainly to help migrant students. A few programs had been successfully run by NGOs in Hungary, but could not receive state funding until 2004.

Under the framework of EQUAL, a program started in September 2003, about 150 schools hired unemployed Roma as "family coordinators," who received professional training to obtain the necessary official qualifications.

Secondary school

As of September 2004 the existing talent promotion program ("Arany János Program") was reframed and expanded to support the most disadvantaged students in secondary schools. A new subprogram also began to work on promoting talented disadvantaged students in boarding schools, as for many talented students with poor family backgrounds, secondary education is hindered by geographic distances.

A comprehensive program was launched in 2004 to develop the vocational school system of Hungary and to improve the efficiency of the pedagogical work there to decrease the drop-out of disadvantaged children.

A new bursary program was initiated by the Government in 2005 in order to support disadvantaged youth during their studies. It included different program types: the Way to secondary school program; the Way to a profession program; and the Way to science program. The programs pro-

vided allowances for disadvantaged students and their mentors, thereby promoting their schooling success with financial and professional assistance. In the first year more than 20,045 disadvantaged students and 7,739 mentors participated in the program and in the following years the number of applications grew further.

Tertiary education

A remarkable affirmative measure was initiated by the Ministry of Education in 2003 to increase the number of socially disadvantaged pupils in post-secondary education. According to the modification of the 269/2000 (XII. 26) Governmental Decree, from September 2005, those students whose parents attended only elementary school and were eligible for supplementary family allowance (that is, they came from an economically disadvantaged family), and students under state care were given the opportunity to enroll in state-funded free courses at the university or college they applied to, if they complied with the requirements set for students applying for courses with tuition fees (if this paid course type was not available, the applicants had to reach 80 percent of the admission score level to be enrolled). The multiply disadvantaged university students³² also had the opportunity to choose a mentor (tutor), who assisted them during their university studies.

The 2.1 Measure of the Human Resources Development Operational Program under the First National Development Plan (2004–2007)

Funding for the expansion of the educational integration measures was provided under the Human Resources Development Operational Program following EU accession. Significant amount (€30,356,701) was available for the implementation of the development program, which was designed to complement the integration policy measures of the Hungarian government. This amount is more than had ever been spent on development programs for the promotion of equal opportunities in education in Hungary.

The basic aim of the programs developed under the measure were to prevent school failure and drop-outs of disadvantaged, especially Roma

³² In 2006, 370, in 2007, 700 multiply disadvantaged students could get into tertiary institutions as a result of the measure.

pupils and pupils with special educational needs, to promote the educational success of, and thereby improve the labor-market prospects and social integration for disadvantaged youth, especially Roma, and youth with special educational needs. The program also aimed at the elimination of segregation in the public education system, and the promotion of non-discriminatory, inclusive educational practices. The activities included training educational professionals involved in the education of disadvantaged, especially Roma pupils, and pupils with special educational needs; development of related curricula and methodology to promote inclusive education; and supporting the adaptation of inclusive educational programs at the level of individual institutions; and disseminating good practices in the framework of horizontal institutional cooperation.

2006–2010

After the elections in 2006, the socialist-liberal coalition continued in government, which ensured the maintenance of the educational integration policy in Hungary. The Education Ministry was managed by the socialists, so the government's approach towards segregation and the exaggerated opportunity differences in public education did not change significantly. The integration program continued, but with a few relevant modifications based on the experience so far gained.

Competitive grant funding to support ability-development, integrated education and pre-school development programs

The 12/2007. (III.14.) and 9/2008. (III.29.) Decrees of the Ministry of Culture and Education introduced a new financial mechanism to replace the “integration head quota/per capita funding.” This type of funding represented a major transformation of the mechanisms and the system of financing equal opportunity programs as supporting legislation created the opportunity to apply benchmarks in the provision of funding. Unlike in the case of previous per capita funding schemes, the regulations of the ability-development and integrated education grant funds required local self-governments to fulfil requirements on the designation of school districts, on the correct proportion of disadvantaged children in their classrooms, and the preparation of an action plan for equal opportunities in public education if they wanted to apply. In the evaluation of applications beside the assessment of the ratio of children with multiple disadvantages in the school, performance in competence-development is also taken into

account: schools have to attach their results in a table of indicators of National Competence Assessment. The funds can be used for the creation of child friendly environments, for training students with methods tailored to individual needs, for acquiring the necessary development equipment, for compensating social disadvantages hindering school achievement, and for setting up and operating pedagogical development groups of teachers. Every element of this school development program is facilitated by the Educational Integration Network through diverse services provided for the schools through a cooperation agreement between the headquarters of the Network and the schools implementing integrated education.

Furthermore, another significant modification was in the regulation: From the 2007–2008 school year secondary schools can also apply for the fund available for preparatory training, and those primary schools, which apply for the integration fund, should start the integration program for each year simultaneously.

*Further modifications relevant to equal opportunities
for children with multiple disadvantages (2007–2009)*

Article 66 of the Public Education Act made the regulations stricter concerning the enrollment of children in public schools from January 1, 2007. According to the modification the free choice of schools to select among applicant students is reduced by making it mandatory for schools to admit every child whose residence is within the school district. Furthermore in those cases when the number of applicant students is higher than the available spaces, the schools must admit the disadvantaged students first and then can use a lottery system to decide the remaining ones. The new regulation also obliged local self-governments to draw school districts in a way that the percentage of children with multiple disadvantages within each school district must not be more than 15 percent higher or lower than the ratio of children with multiple disadvantages in the whole settlement. Also, the proportion of students with multiple disadvantages among neighboring school districts should not be greater than 25 percent.

Other changes made it mandatory that schools and kindergartens maintained by churches and other institutions enroll children who reside within the settlement (up to a minimum 25 percent of the total number of children in the school), while priority is given to children with multiple disadvantages, as defined by the integration goals. Otherwise the schools would not be eligible for additional state subsidies. The relevance of this measure was demonstrated by the fact that the proportion of multiply disadvan-

tagged children in church maintained schools is less than one-tenth of that of the state schools. According to official education statistics, 914 multiply disadvantaged students attended non-state schools, while 59,744 were in state schools in 2009.

A new regulation assigned the Education Authority (Oktatási Hivatal) to evaluate the enrollment procedures of schools to control their compliance with the new rules. The upper limit of the fines of the Authority was also raised to one million HUF from a hundred thousand HUF.

According to the modification of the Public Education Act the preparation of an action plan for equal opportunities in public education is the condition of application for any of the competitive funding programs (both national and EU). Additionally, according to the new regulations, in any competitive funding program priority must be given to schools which are in an economically disadvantaged settlement and for schools with more than 25 percent disadvantaged students.

New standards of entry testing to primary school were also established, and the Public Education Act was modified to redefine the categories of special needs.

Those kindergartens, which educate multiply disadvantaged children in significant proportion, can apply for funding since 2007 if they provide personal development and talent promotion program for the children according to the criteria set forth by the Education Ministry. The maximum amount, which was 2.7 million HUF could be spent on development equipment and the expenditures connected to the kindergarten education of multiply disadvantaged children. The criteria designed by the Education Ministry, however, did not include a non-segregation requirement, like that the groups should be organized with the correct distribution of multiply disadvantaged children in view. The experiences showed that due to this deficiency in the regulation during the first years of application, many local governments received this extra fund, which maintained segregated groups for multiply disadvantaged children within the kindergartens.

In order to promote early development and kindergarten education for multiply disadvantaged children and motivate parents to enroll children early, new financial support is also provided for those families that send their multiply disadvantaged children to kindergarten before the child's fourth birthday and the child attend the kindergarten regularly.³³

³³ In Hungary, according to current regulations, kindergarten education is only mandatory after the age of five. Children can be enrolled in kindergarten from the age of three.

The Ministry of Education and Culture introduced a complementary stipend for teachers working with multiply disadvantaged pupils. The complementary stipend was accepted by Parliament at the end of 2008, and regulated by 138/1992 (X. 8.) government decree.³⁴

Equal opportunity promotion programs in the Social Renewal Operational Program

Within the Social Renewal Operational Programme of Hungary's second National Development Plan ("Új Magyarország Plan" 2007–2014) a comprehensive measure was elaborated to fight against inequalities in public education. Measure 3.3 consists of seven sections covering four main intervention areas, which were planned to be implemented through a central programs and several open calls for school administrators. The outlined purpose was to support the implementation of equal opportunity action plans, to develop quality assurance of schools that implement integrated education programs, to promote post-secondary education of Roma students,³⁵ to support extracurricular study groups for students with multiple disadvantages, to develop second-chance school programs and digital secondary school program for disadvantaged youth, to elaborate an "anti-discrimination alarm system" in education involving several authorities, professional bodies and NGOs in a network. The total budget of the seven constructions is almost 40 billion HUF for 2007–2014.

Principles of the equal opportunity-based supporting policy

Besides the huge amount of development funds allocated for the programs to improve equal access to quality education services for the most disadvantaged children, other aspects also provide unique importance to the so called "Equal opportunity-based supporting policy." Decision makers at the Education Ministry and the National Development Agency realized that significant achievements could only be expected if equal opportunities for the multiply disadvantaged students are not exclusively in focus of

³⁴ Report of the Ministry of Education and Culture on the new integration measures, manuscript of Szilvia Hegyiné Pallaghy, Head of Department, Directorate of Equal Opportunities, Ministry of Education and Culture, 2010.

³⁵ This construction is planned to expand the successful NGO program: "Romaversitas" to provide supporting services for Roma university and college students in Budapest and three other cities.

targeted programs, but part of every mainstream education development program horizontally. The main idea of this policy was to stop the segmented spending of funds for public education development and to ensure that every forint spent on education development promotes equal opportunities in education and does not contribute to the maintenance of discriminative practices.

According to the new policy both Hungarian and EU support funds are only provided on condition that the applicant local governments or other school maintainers (churches, NGOs) must prove that they do not segregate or support discriminative educational practices, by making a comprehensive situation analysis on the level of the settlement and the school/kindergarten and registering every form of inequalities in education services focusing on the students with multiple disadvantages and Roma. Furthermore the applicant institutions have to develop an equal opportunity action plan on the basis of the situation analysis according to the guidelines provided by the Education Ministry. The activities of the action plan must be designed to address all the problems and challenges relevant to the equity of socially disadvantaged children in public education. Finally, the applicant organizations have to commit themselves to implement the equal opportunity action plan to promote equity in education for disadvantaged students and meet the target indicators set in the plan for shorter and longer terms.

The situation analysis and action plan cover a variety of intervention areas. These include the promoting equal access to educational and early child development services, abolishing educational discrimination, reducing the segregation of Roma and disadvantaged children among and within schools, improving their attendance in kindergarten, developing comprehensive preventive measures to reduce the number of multiply disadvantaged children assigned to the category of “mildly mentally disabled,” reducing drop-outs, and promoting their enrollment and schooling success on secondary level.

Based on the situation-analysis and action plan, the proposed development project is evaluated according to its potential impact on equity in education in the specific settlement. If the project is accepted, the implementation of the public education equal opportunity action plan is a contractual obligation of the beneficiary organizations. The situation analysis and action plans have been used in the evaluation process of educational infrastructure development project proposals, as well as in the selection of public education innovation project proposals in 2008 and 2009. As a result of this conditionality in 2008 and 2009 more than 500 school ad-

ministrations were obliged to start the implementation of their action plans parallel to the implementation of the development projects that won support.

For the preparation and implementation of the action plans professional and financial supports are provided through two constructions of Measure 3.3 of the Social Renewal Operational Program. In the settlements, where the proportion of disadvantaged students exceeds 40 percent, a central program provides free consultancy on the elaboration of the situation analysis and the implementation of the action plan through a network of trained equal opportunity experts. In these cases the equal opportunity experts have to validate and approve the plans before they are accepted by local decision makers, which is an important element of quality assurance of the action plans. By 2008, 101 public education equal opportunity experts had been trained and about 1,500 public education equal opportunity situation analysis and equal opportunity action plans have been prepared with expert support until 2011. Furthermore 27,277,399 EUR in funding was available on a competitive basis in 2009 to support the implementation. The call for proposals was published on April 30, 2008. In the first round 51 projects received support in 2009 in the amount of 3,209,930,960 HUF (about 12,600,000 EUR), so less than half of the funds available for the equal opportunity projects. The implementation of these projects was to end by July 31, 2011. Originally, about 50,000,000 EUR had been designated for this purpose for 2007–2014.

Based on the experiences of the public education equal opportunity action plans the government initiated a similar program in the field of housing. Anti-segregation plans must be designed in each settlement, which apply for funding for town rehabilitation (urban development) programs. This tool is designed to challenge residential segregation of Roma, which is a deep social problem in Hungary.³⁶ A promising cooperation was piloted in 2008–2009 when the public education equal opportunity expert network worked together with the anti-residential segregation experts in a development project for the most deprived micro-regions in Hungary to challenge the segregation of Roma.

³⁶ According to official statistics, currently approximately six percent of the 600,000 Hungarian Roma live in segregated Roma “ghettos,” where the infrastructure is much worse than the Hungarian average, the living environment and the housing conditions are unhealthy and the services (water supply, electricity etc.) are frequently incomplete, or eliminated. Access to public services and institutions for these residents is hindered by bad road conditions and poverty. The majority of these people are unemployed and infectious illnesses are frequent among them due to bad hygienic conditions.

Before the elections in 2010, the former government decided to make it mandatory for local self-governments to elaborate comprehensive equal opportunity programs—on the model of the public education equal opportunity action plans—before applying for EU support in the framework of any development program. These local equal opportunity plans were supposed to be prepared by every municipality by January 2012. Following the election, nothing more was heard about the implementation of this provision, even though the content of the local equal opportunity programs was already defined in the Equal Treatment Act.

Overview of the impact, obstacles, and future challenges of the integration policy

The outlined integration program of the previous governments was aimed to eliminate segregation and to make it possible for children from different social and cultural backgrounds to be taught together and receive the same level of education. The ultimate goal of this policy is ambitious, requiring many obstacles and conditions be overcome in order to improve the situation. Among these, some factors will take several more years to change. And even if a policy is successful, institutionalized practices and routines will require time to change. The impact of the recent policy initiatives are hard to be measured. Eight years after the issue of segregation was put on the political agenda, a few results and tendencies can be seen thus far.

Obstacles and barriers of the integration process

Based on reports of several recent cases of segregation of Roma students, and on a recent survey, the application of the anti-discrimination provisions and the use of integration incentives can not be efficient enough to avoid segregation of Roma children in Hungary.³⁷

The main obstacles to the successful integration of Roma children remains the opposition of parents of non-Roma peers, the conflicting interest of the school administrator local authorities, and the lack of effective monitoring and sanctioning of violations of anti-discrimination provisions by school administrators and schools. Therefore the most crucial, and at the same time, the most difficult challenge, is to change the attitudes of people; teachers, parents, and local decision makers, and to gain common

³⁷ Havas and Zsolnay, *Az integrációs oktatáspolitiká.*

understanding and support for the desegregation policy from all the actors, and the general public.

According to a 2003 public opinion survey on the integration program conducted by TÁRKI, 44 percent of the general public, 48 percent of teachers, and 38 percent of the parents were in favor of integrated education. At the same time, 46 percent of the general public, 28 percent of teachers, and 37 percent of parents were explicitly in favor of segregated education. Based on the research findings, it can be estimated that at least one-fourth of the Hungarian population (even those who are directly connected to education as teachers and parents) would like Roma children to be educated in segregated schools, effectively isolated from non-Roma students. We can conclude that still a remarkable proportion of people openly admit to support the separation of Roma children into segregated classes within mainstream schools. The pro-segregation attitude is still pervasive in Hungary, which provides a basis for serious skepticism over prospects of success of the desegregation efforts.

Besides teachers and parents, local authorities as the administrators of the schools are the most important agents in the matter of integration processes. It can significantly limit the efficiency of the policy if these actors are not informed well enough or believe they have no interest in desegregation.

According to a research of the National Public Education Institute in 2004–2005, 61.7 percent of local decision makers supported the educational integration program. Only 2.8 percent of the respondents rejected it, and 35.5 percent stated that they were not informed well enough about the issue.³⁸ In practice local authorities are frequently reluctant to eliminate segregation in their localities, as they assume that most of the residents are in favour of segregation and as elected representatives of the community, they feel they must follow the public opinion to be re-elected. Furthermore they all belong to the same social class and in most cases share the same opinion with the majority parents. The local status quo is in many instances based on the informal agreement of the school management and the local municipality. Therefore, it is essential for the success of integration initiatives that local decision makers be informed, aware of their responsibilities, and the consequences of their decisions.

The right of the parents to choose the way of education and the school to their children is guaranteed in the constitution. There are no real restrictions in practice, only the financial circumstances of the family limit this

³⁸ Németh, "A roma tanulók integrációjának gyakorlata, háttéranyag az Országos Köznevelési Intézet 2006. január 19.-i szakmai napjához."

selection within the public education system. As soon as the proportion of Roma students reaches a certain level, non-Roma parents do not tolerate them anymore and take their children out of the school. The children of well-off parents leave the school first, and then those, who can afford to take their children into a more distant school. At the end of this process, the few non-Roma, who remain in the school are usually multiply disadvantaged, just like the majority of the Roma students.

Such processes resulted in extreme differences among the schools within bigger cities and between the schools of neighboring small settlements. This way many homogenous Roma-only schools evolved as the privileged families left the schools.

While parents compete with each other for better schools, better schools can take the opportunity to select the students. The modifications of the Public Education Act in 2006 tried to put an end to this practice. Despite government efforts more privileged parents still find the ways to get around the legal obstacles like by registering a permanent address for their children in another school district, establishing a private school, or choosing a church-run school.

In Hungary non-state schools can receive the same per capita support for their students as state-owned schools, so those parents who do not want to educate their children in the mixed public school, still have the option of choosing a church-run school. Although the former government regulated the compulsory enrollment of disadvantaged students in church schools, this regulation did not change the composition of students significantly. Furthermore, school authorities and churches today tend to cooperate in order to secure segregated schooling for Roma children. In several settlements, the church took up the segregated schools from local self-governments. In Nyíregyháza (a county center in North-East Hungary) the Greek Catholic Church intends to reopen the segregated Roma school in the Huszár Roma settlement, which had been shut down by the former local government in order to integrate the Roma children into the mixed schools of the city.³⁹

Finally, three simplified categories of schools can be described regarding Roma integration in Hungary: the privileged, the middle and the Roma-only schools. The “middle schools” keep the balance, mainly the less privileged non-Roma and the more privileged Roma students attend

³⁹ For more information on the issue visit the policy note of the REF at http://www.romaeducationfund.hu/sites/default/files/publications/nyiregyhaza_utat_nyit_a_szegregacionak_-_a_roa_allaspontja.doc

them. The Roma-only schools are usually the ones closest to the segregated residential areas of the settlement (Roma streets) or the special schools for the mentally disabled (usually maintained by the county self-government) if there are such institution in the town. The main targets of the integration program have been those “middle schools,” which worked with heterogeneous student composition and have been motivated to improve the quality of education to keep non-Roma students and attract more privileged pupils to keep the ethnic balance. In practice the integration policy did not reach the “privileged” schools and had limited impact on those Roma-only schools, which were involved in the program (dissemination of more efficient teaching methods, improved school environment and infrastructure etc.).

The former government tried to find ways to end discriminatory patterns by forcing the local school authorities to obey anti-discrimination provisions and maintain mixed schools. The three main tools of this effort were the financial incentive of the integration subsidy, the aggravation of the legal provision regarding the school districts, and the equal opportunity action plan, which became a condition of any extra support for education development. The effectiveness of these policy tools can only be assured if the application of the legal provisions and implementation of well designed, substantive equal opportunity action plans are monitored and evaluated. Moreover without adequate sanctioning powers, these measures cannot be effective enough to shut down schools which segregate Roma children.

The authority which has the power to evaluate if school authorities comply with regulations in Hungary is the Education Authority (Oktatási Hivatal). Since 2007, the Office can conduct official check-ups to monitor if a school complies with the equal opportunity provisions. Nevertheless, this task has only been carried out in a few instances. The Office does not have the necessary resources and capacities for effective control. The sanctioning power of the Office was very limited until 2007, when the upper limit of the fines was increased to one million from 100,000 HUF. Official procedures were initiated in twelve occasions between 2007 and 2010 in equal opportunity cases. The highest (publicly known) fine issued because of the violation of the equal treatment provisions was 70,000 HUF.

The problems of using the definition of “multiply disadvantaged children”

The importance of the definition of children with multiple disadvantages as a policy tool in Hungary is unequivocal. The definition helped to make an end of the “Roma pedagogy” paradigm and to de-ethnicize educational development tools that address the problems of Roma children. The new approach introduced by the integration program in 2002 defined the pedagogical innovation necessary for effective integration as a methodological reform, which improves the efficiency of teaching for both Roma and non-Roma students. On the other hand this definition is the source of serious problems in the implementation, and even more in the evaluation of the desegregation policy since it is based on the voluntary declaration of the parents concerning their educational level. Since many parents are not aware of the services that their children could benefit from after the declaration, they do not sign the declaration at the office of the local notary. This is the main reason for the frequent contradictions in the official data provided by the schools and the findings of sociological surveys in the same settlements.

The anomaly of statistical data collection is even more transparent if we compare the official statistics of the Public Education Information System with the data provided by notaries. For example, in the 2008–2009 school year the difference between the numbers of multiply disadvantaged students in the two statistics was more than 6,000, while in the kindergartens the difference between the official sources was 4,000. Thus it is impossible to evaluate the compliance with legal provisions regarding the proportion of multiply disadvantaged children, therefore it is difficult to design and implement effective equal opportunity plans to eliminate segregation.

Schools and local decision makers, who are committed to segregation of Roma children in their settlement, can shuffle successfully without any consequence. Hence it is essential to examine whether other policy tools could be used instead of, or simultaneously with, the definition of multiply disadvantaged pupils in order to achieve better results of the integration policy, namely the collection of ethnic data with adequate safeguards. It is also a question to be answered whether it would be an efficient solution to emphasize the ethnic aspect of the segregation of Roma children and put it in the focus of the desegregation efforts. As it is evident that besides the disadvantages that affect the majority of Roma children because of their marginalized social status, they are also discriminated against for their ethnicity.

Outcomes of the Integration Program

There are figures which could make us more optimistic about the results of governmental measures. More specifically, the concept of the integration and preparatory training that the 57/2002 (XI.18) Decree of the Ministry of Education introduced already has some measurable impact. According to official data, during the first school year following the introduction of the program and the per capita support, 32,800 children were involved in the program. The number of students increased significantly during the eight years following the introduction of this subsidy.

We can conclude that more and more schools were informed about the program, and the willingness to participate and apply for the funding has been growing. According to the statistics of the National Educational Integration Network the number of children benefiting from the integration subsidy has grown from 10,160 (in 2003–2004) to 44,520 (in 2008–2009), furthermore 14,359 kindergarten children took part in the program in the same year, which was the second year following the introduction of the kindergarten education development fund for the development of multiply disadvantaged children. Altogether 8.28 billion HUF was spent in 2009 and about one fourth of the Hungarian public education institutions applied for the fund and introduced the integration program. (For more data see the table in the appendix.)

Another positive sign for the interest and willingness of the schools is that the calls for proposals of the HRDOP 2.1 measure of the first National Development Plan (2004–2007) were quite successful. Despite the huge administrative workload schools had to complete to apply. The projects under the HRDOP 2.1 measure were implemented in 83.32 percent according to the statistics of the Managing Authority from 1 September 2009. Out of the 855 project proposals 344 received funding which altogether exceeded 7.8 billion HUF by 2009. Unfortunately more substantive analysis is not available on the impact of these projects.

The central development program of the HRDOP 2.1 measure has some more substantive indicators of program results besides the amount of development funds spent. In the framework of the central program the National Educational Integration Network reached at least 798 schools with its services countrywide (which is a huge expansion, considering that in 2004 the Network consisted of 45 base schools in four regions). 8,154 teachers took part in at least 60 hours training in methodological areas relevant to the inclusive education of multiply disadvantaged children, and more than 2,300 non-teaching professionals (officials of local municipalities, social

workers, journalists, local NGO members) received training about the integration of these children. According to the evaluation of the pedagogical training programs implemented in the project, the participating teachers received useful knowledge, which together with the institutional development program of the concerned schools could lead to successful desegregation processes within the schools.⁴⁰ Furthermore, eleven program packages were developed for teacher training institutions of universities to strengthen the knowledge and competences of future teachers relevant to inclusive education of multiply disadvantaged children. Eleven teacher training institutes took part in the adaptation, involving 31 educators and 700 university students with good results. In the framework of the central program seven pilot local desegregation projects were supported in Borsod-Abaúj-Zemplén, Bács-Kiskun, Baranya and Nógrád counties. The implementation had several lessons on the barriers of effective desegregation in practice.⁴¹

In the framework of the second National Development Plan (within the equal opportunity development program of the Social Renewal Operational Program) the central project continued with diverse activities implemented by the Education Non-profit Ltd. By the end of 2009, the development project has reached approximately 75,000–80,000 pupils with multiple disadvantages and about 200,000–225,000 non-disadvantaged pupils in around 1,600 schools. One-fourth of the Hungarian primary schools took part in the program to renew teaching methodologies and several secondary schools and kindergartens joined the project as they were also targeted by the teacher training programs that had been originally developed for primary school teachers in the HRDOP 2.1.1. central program between 2004–2007).⁴²

The great number of beneficiaries and trainees unequivocally indicate that numerous schools and local authorities recognized their financial stake in the integration program, but this fact alone does not show the real success and impact of the integration policy. It can only be assumed that the commitment of schools to integrated education also strengthened in parallel with the expansion of schools and pupils involved in the integration program, based on the fact that the application criteria of the competitive funding scheme became stricter in 2007.

⁴⁰ Ilona Liskó, *Kutatási zárójelentés: Hatásvizsgálat a HEFOP által támogatott integrációs program keretében szervezett pedagógus továbbképzésekről.*

⁴¹ A HEFOP 2.1.1. központi program A komponensének zárótanulmánya. Educatio Kht.

⁴² Budapest Institute, *Evaluation of the Equal Opportunity and Integration Project SROP 331.*

Yet until the implementation of the integration measures and the application of the funds are thoroughly evaluated in the schools, their effects cannot be measured. Self-evaluation is part of the integration program, but the development of a standardized external evaluation scheme and monitoring system would also be essential in order to avoid the similar misuse of the fund as the previous minority education subsidy.

The need for monitoring of the application of the integration subsidy in schools was underlined by an evaluation of the National Educational Integration Network by educational specialist Aranka Varga and researchers Csaba Pintér and Ferenc Arató. They concluded that besides continuous monitoring of the application of the equal opportunity criteria, the inclusivity of the institutional environment and the applied methodology should also be monitored in order to ensure that effective integration takes place in the schools. The researchers formulated several additional recommendations on how the Integration Network should be developed to provide services more effectively.

The impact of the desegregation efforts

A remarkable survey has been conducted by the sociologist Gábor Havas and the European Comparative Minority Research Public Foundation to analyse the impact of the educational integration policy in 2010. The survey is the continuation of two former segregation researches conducted by Gábor Havas in 2000 and 2004. The survey proved that the integration policy could not challenge segregation successfully as the scale of unequal distribution of socially disadvantaged students among the Hungarian public schools has not changed significantly. Havas involved 350 schools in his 2010 research (while 553 schools took part in the 2004 survey). Between 2004 and 2010 the proportion of Roma children in the surveyed schools increased with at least 10 percent. The number of schools with Roma majority increased by about 34 percent. The tendency to drop-out by non-Roma pupils has strengthened in the settlements where Roma live in greater number and the spontaneous residential segregation of the most deprived settlements further continued. Non-Roma children tend to go to the more prestigious school of the micro-region, or in the closest bigger city.

According to the survey significant result cannot be expected in the fight against segregation as in most settlements where Roma and poor non-Roma live in great numbers integration does not take place at all. The survey also highlighted the fact that despite the "From the Last Desk" Program, the channelling of Roma children into special schools and

classes still remained a pervasive problem in Hungary. According to the study until this date at least 799 homogenous (Roma-only) segregated special classes operate in Hungarian primary schools. Although it could be interpreted as a promising result that in 2004 the majority of the schools involved in the survey operated segregated classess following special curriculum, and approximately half of these classes have been eliminated since then, 30 percent of them were shut down in 2007.

Although huge funds have been spent on school development, the schools where most of the students are Roma and multiply disadvantaged usually could not benefit from any of these developments. Furthermore, the survey highlighted the problem that in these settlements the kindergartens usually lack spaces and the capacities have not been increased in the most problematic locations despite the governmental efforts to secure funding for them. The 2010 survey revealed the same problem as in 2000 and 2004: there are still not enough qualified teachers in the schools which are attended by Roma in higher proportion. Seventy percent of schools where the majority of students are Roma do not have enough qualified teachers and operate among worse than average infrastructural and technical circumstances.

Nevertheless, according to the survey the majority of school masters and teachers believe that the situation of disadvantaged and multiply disadvantaged pupils has improved.

A positive impact of the integration policy is that since 2004 more teacher and school masters believe that school failure is the responsibility of the schools, and not just the Roma children and their parents. More teachers thought that the problems derive from the lack of competent teachers, educational material, and equipment.

Nevertheless, a remarkable survey proved that those schools which so far participated in the integration program and undertook the methodological innovation assisted by the National Educational Integration Network provided better educational opportunities for multiply disadvantaged children compared to schools not participating. The evaluation of Gábor Kézdi, Éva Surányi and Zsuzsanna Surányi on the impact of the integration program⁴³ concluded that those students who studied in integrated

⁴³ The aim of the study was to compare the student achievements of schools participating in the integration program, with that of schools not participating in the program, but operating among similar conditions regarding the social composition and educational difficulties of students. The first data collection was conducted in spring 2005, and the survey was finished in 2007. Thereby the reserchers could follow the second and sixth graders for two years. Altogether 60 schools and 4,000 students participated in the survey.

classes had higher grades, better reading skills, stronger self-confidence (in terms of assessing their skills and their ability to achieve in school), improved social efficiency (that is, they could integrate into class and school society more successfully), felt a higher level of autonomy, and their thinking was more democratic and less prejudiced. Moreover, final year students of these schools were more likely to continue their studies at the secondary level for high school graduation. The evaluation also confirmed that group activities were more frequent in these schools and that the cognitive test scores of the non-disadvantaged students of the integrated classes were not worse than in schools which did not integrate. Therefore the evaluation underlined the fact that the integration did not decrease the schooling success of those more privileged students who studied together with socially disadvantaged pupils in the same class.

The results of the PISA tests also indicate a positive impact of the policy measures taken by the Government. The 2009 test scores show that the efficiency of the Hungarian public education system in developing basic skills relevant to employability has improved, and also indicate that the opportunity differences in education has decreased since 2000. Szira makes this point very clear: "There are several reasons for us to be happy for the most recent PISA survey. In the period of 2000–2009, out of the four PISA surveys taken, it is only the latest one showing significant improvement in reading comprehension, the subject in which our students have unfortunately always been performing poorly. In the year of 2000, their results were 16 points behind the average of the OSCE countries, but in 2010 they made an enormous increase of 14 points, a yet unprecedented result. It is extremely important to mention that the test scores of both the students with the poorest and the best achievements improved: in 2000 the rate of those with the poorest results was 22.7 percent, in 2006 it was 20 percent, and today it is decreased to 17.6 percent. The rate of top students grew (from 5.1 to 6.1 percent), which could not be claimed as a significant improvement, still, the tendency proves to be positive. The standard deviation of performance is extremely rejoicing: the distance between top and bottom students decreased, resulting in the improvement of the skills and scores of the bottom students, thus the inequality between students reduced."⁴⁴ It is out of question that these improvements are the visible results of the public education development measures focusing on competence based education (development of skills and competences), the dissemination of inclusive methodology and the promotion of equal op-

⁴⁴ Szira, "Suba a subához."

portunities in education through the integrated education program following 2002.

Finally, although it is hard to estimate the real impact of the Hungarian educational integration measures, it must be emphasised that these remarkable initiatives are unique in the history of the Central-Eastern European region. Hungary was the first to admit the relevance of segregation and opportunity differences in education, and to challenge it with comprehensive measures. There is definitely a long and difficult journey ahead, and the outcome can only be guaranteed in the long term if succeeding governments remain committed to this issue, so that the integration policy can continue unbroken and consistently reinforced. But on the contrary, the official position of the current right-wing government provides reason for serious doubts. Therefore, we can not be optimistic that the above described integration program will have significant results in long-term, and that it will pave the way for several supporting measures with the same goals.

Although the integration of Roma is declared to be a high priority of the current government, the elimination of segregated education is not a priority anymore. Furthermore, according to official declarations, segregated education of Roma children is an acceptable solution if the quality of education is high enough to provide good chances for successful schooling. According to the draft of the new Public Education Act of the current government, the creation of catch-up classes would be supported again to assist children to fall into line with the majority. Preparatory school years on both primary and secondary level would also be introduced to promote the school achievement of disadvantaged children, which could provide opportunity for further segregation. Due to the planned changes in the financing scheme, schools will be motivated financially to keep the segregated catch-up classes for the multiply disadvantaged pupils following the preparatory years, which could basically turn back the desegregation and inclusive methodological development tendencies and results tendencies to the reverse. The introduction of more intensive selection by oral entrance exams in primary schools will hinder the mobility of underprivileged students in the public education system at a very young age and most probably increase the differences among public schools in social composition and educational achievements. Several more points of the draft act have been criticized by numerous education experts, professionals and organizations, e.g., the Roma Education Fund, for affecting Roma and multiply disadvantaged children harmfully and increasing selectivity. (The main issues are: the change of the school-

age from 7–18 to 6–17, the elitist promotion of 6–8 year high schools, the abolition of per capita supports, the incoherent modification of the definition of disadvantaged and multiply disadvantaged children in education, which would cover a wider layer of socially disadvantaged families besides the most vulnerable ones, and the abolition of equal opportunity conditions for development support in public education.)

Appendix

Resources devoted to integration in public education 2004–2009 / billion HUF

		2004	2005	2006	2007	2008	2009	2010
Public education integration program	Integration per capita support / since 2007 targeted support on competitive bases	1,15	1,382	1,56	1,478			
	Talent promotion per capita support /targeted support since	0,564	0,559	0,4	0,1952			
	Kindergarten development program				0,652	2,359	3,8	3,65
Complementary stipend for teachers working with multiply disadvantaged pupils							3,72	3,42
Financial support for multiply disadvantaged children attending kindergarten							0,76	0,76
Total		1,714	1,941	1,96	2,3252	2,359	8,28	7,83
Bursary program			0,75	1,94	1,97	2,571	1,486	2,1
	EU development funds							
1st National Development Plan		7,7						
New Hungary Development Plan					~40 (up to 2013)			

Source: Ministry of Education and Culture

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Interview with Costel Bercus from Romania

Costel Bercus is the President of the Board of the Roma Education Fund. He was the Executive Director of the Bucharest-based Roma non-governmental organisation Romani CRISS and in that capacity he took a leading role in advocating school desegregation in Romania. Between 2005 and 2010, he was a member of the Roma Advisory Board of the Open Society Institute.

The interviewers were Iulius Rostas, Mihai Surdu and Marius Taba.

Question: Let us start the discussion with the issue of Roma education under communism and in the transition period. What was the education of Roma like during the communist period? What were its main characteristics?

Costel Bercus: On the one hand, communism had quite a positive impact on the issue of Roma education. This favorable effect was due to the emphasis that the system of education placed on school attendance. The result was a high level of attendance of Roma children in mainstream schools. Also, there was a less overt level of discrimination that Roma had to face during communist times. This is the positive side.

On the other hand, the access of young Roma to higher education was not as open as it is today. This is for various reasons. Why do a majority of Roma who graduate from secondary schools not go to universities? Besides the pre-school education, primary schools and secondary schools, Roma mainly chose vocational training, so it sooner had to do with the overall policy rather than discrimination based on ethnicity. It was mandatory for all children to be in the school system until the higher education level. Overall, this circumstance affected the education of Roma in a positive way. Today, the gap that exists between Roma and non-Roma is significantly wider than it used to be during communist times.

Q: Why do you think there were these positive and negative aspects? What were the causes?

C.B.: It was primarily the existing policy that education was mandatory for all children, no matter what their religious or ethnic background. If a child in that system failed to attend school, then a representative of the school—the principal or the headmaster—as required by the system, visited the family and handled that situation. The goal was to keep all children at school. It was in their job description, they were expected to visit the parents and to check why children failed to show up for two or three days. All this was ensured by the policy of those times. Today, no preventive measures similar to that are taken to ensure that children do not stay out of school. It was also a mean of social control, if you want.

The schools and the teachers had to perform and to deliver quality education, as the Party emphasized the need to educate—that is, to indoctrinate—everybody.

Q: Why do you think Roma had less or limited access to a higher education?

C.B.: Well, I would not say it was only a Roma issue. In Romania, less than 5 percent of the population held a university degree at the fall of communism, according to the census from 1992. I think back then it was a larger social issue, but certainly most of the Roma were affected. A few Roma managed to go to universities, but most of them ended up receiving vocational training as there was a high demand for skilled labor. Most of them worked in large factories.

From one point of view it was good because there was a guaranteed link between graduation and access to the labor market. It was part of the political system, based on the ideology that everyone should have a job and should work, and every graduate should be offered a job. There was also a clear obligation for all citizens, so to speak, even for those who had a low level of education. Such individuals were simply forced to achieve a minimum level of education and then go to work. Certainly, it was an easier way for Roma to find their place in society, especially following centuries of slavery, deportation and systematic exclusion. So, during communism, a certain number of Roma had the possibility to become part of the middle class, but not the *nomenklatura*.

Q: You mentioned that the gap between Roma and non-Roma in education grew deeper during the transition period. What were the similarities and differences in education of Roma during communism and in the period of transition?

C.B.: There were a lot of differences. On the one hand, there is no proper coordination in the funding system, just as concerning the duties and obligations of schools to ensure good quality education for all children, no matter what their religious or ethnic background is. So it is slightly different now from what it used to be during communism. Then there was an obligation that schools had to make sure that all the children were in school and there was no absenteeism. Compared to communism, today not many officials, if any, care if drop-out rates increase—which in certain cases can amount to up to 50 percent of Roma children. Maybe what they do care about is having them recorded on the lists, but not necessarily having them physically in school. Another large difference is the way children are treated today, how ethnic, religious diversity is treated, all of which creates an atmosphere of intolerance in schools.

Today we speak about inclusive education and inclusive school—“school for all”—and there are all those slogans which in theory look fine, but in practice the situation is slightly different. We all know what is actually there in the daily life of a school or in a community. So, there are a lot of dissimilarities, and they need to be pointed out. As regards similarities, looking at what it used to be and what is happening nowadays, I cannot think of any.

The system of education has “suffered” a lot of changes, a lot of reforms have been implemented since 1998 when education reform began in Romania. Just to mention ministers of education: each new minister who took over would mix everything up, as it were, creating a situation that was unclear to average people. They make people confused with this ever-changing system. I think we have missed a lot in the last ten years.

Q: You have mentioned several differences between the educational system in the communist times and the times of transition. Are there any differences in terms of perception? How do you think Roma perceive the current educational system compared to what they used to think about it back in the communist period?

C.B.: This is a very interesting question. First of all, during communism, as I already mentioned, there was a generation of Roma who had the opportunity and were interested in becoming part of the middle class. They saw it clearly that education was the way to move up on the social scale. Today, in my view, many Roma believe there is no clear relationship between education and social status, thus no interest; they do not see any interest in receiving education.

This is not a Roma-specific perception. This is because they see the failures within the educational system; they see that even if one has proper

education, even a university degree, there is no certainty that the person will get a job. There are more and more unemployed people. The perception today is that there is no interest in receiving proper education when a number of people even with higher educational background remains unemployed. And this is clearly a failure of the system.

I think this is what society has to solve—to rebuild these links and remodel all its social components to make the system of education suitable again to provide all the necessary knowledge for students to make them active and useful members of society. Viewing it from the Roma point of view, today it is twice as difficult for them than for non-Roma. On the one hand, to receive proper education and defeat exclusion and discrimination, on the other, working more efficiently than non-Roma only to prove that they are “just as good” as non-Roma. Getting a job even if a Romani person is well-educated still remains a challenge. If the non-Romani population, the mainstream society is facing difficulties in finding work, for well-educated Roma it is twice as difficult to achieve success.

Q: Which do you think are the most important or the main policy changes that affected the education of Roma?

C.B.: Well, first of all, the policies that were elaborated after communism do not take into account, or do not value, the ethnic diversity of society. Everything was built based on a mono-block policy despite the circumstance that the constitution—for the first time—in 1991 mentioned, and gave recognition to, a number of national minorities. In education, the ethnic diversity was recognized only in relation to some minorities. The approach to the situation of Roma in education was based rather on these experiences and not on the multiple issues Roma were facing.

During communism Roma were more or less integrated. They were together with the non-Roma even though, within a social class, there were certain levels of segregation or different treatment. But after communism and during the transition period, when the young democracy was supposed to be built in Romania, schools and local authorities as well as non-Romani parents felt the freedom to declare that they preferred not to have their own children sit next to Romani children, and to act accordingly. So the exclusion of Romani children from mainstream education to a large extent started right after the fall of communism. And, twenty years later, we have a situation in which many activists, NGOs, policy makers and education experts are trying to find solutions to it.

Q: How do you think communism dealt with Romani identity and Romani culture in comparison with the transition policy? What are the differences?

C.B.: First of all, communism did not deal with any ethnic or religious identity. The official policy was that the Romanian state was composed of Romanians only. It was the main policy that everybody was equal. There was no other definition. Diversity as such was not an issue, therefore, one could not expect the communist system to deal with what did not exist. I think that was the negative aspect.

On the positive side, in one way or another, was that the rights of people were indeed more or less the same, let us say, for example, the right to work. If somebody was deprived of the right to work, the employer was immediately punished, because back in those times the general policy was that all working-age adults had to be at work. There was a similar policy with respect to health and education. So nobody was allowed to be excluded or discriminated, hence there was no need to define discrimination or exclusion as an issue or phenomenon.

Q: You said that access to education during communism was equal for all Romanians, Roma and non-Roma alike. What about bilingual schools?

C.B.: There were just a few of them, definitely not many, and usually for the Hungarian minority. I believe the fact that bilingual schools existed can be explained with a certain level of tolerance that communism happened to have in its different phases in its attitude towards national minorities. The existence of churches is a similar example— not all of them had been destroyed.

Don't get me wrong—I am not defending communism. I am only comparing the good and bad things in the two systems. Today, what is positive is that anybody can freely express their religious views or decide not to conceal their ethnic background, which was not the case in the communist times.

Q: Let us move to the topic of educational segregation of Roma. When was the issue of segregation of Romani children in schools publicly (openly) discussed for the first time in Romania? And what was the context of this?

C.B.: As far as I can remember, before 1997 I never heard anybody talk about segregation as an issue, anybody mentioning Roma children being segregated in schools or performing differently from non-Roma. Then after 2000, I think, Romani leaders started communicating with the outside world, they began attending international conferences, consultations, training seminars. It was there that we heard for the first time about the problems Romani children faced in other countries, such as Bulgaria and Hungary.

In February 2003, I was invited to Cluj-Napoca to take part in a workshop. My colleague Marius Tabăba was also there. Back then we were working for Romani CRISS. At that time we had for two years been operating a human rights monitoring network. We were working with a number of young activists monitoring cases of human rights violations and also cases of discrimination in various fields of life. Approximately sixty NGOs, Gheorghe Sarau from the Ministry of Education, and some officials from the government took part at that workshop which was organized by the Roma Participation Program of the OSI and the Resource Center for Roma Communities. The issue of segregation was brought up again and turned into several discussions.

Unexpectedly, Mr. Sarau stated that we were wrong, that we had imported the issue of segregation from Bulgaria and Hungary, and that there would be no such case in Romania since Romani children were not segregated. Therefore, it was exclusively an issue affecting Bulgaria and Hungary. In a response to this statement, a friend of ours and a monitor of the Romani CRISS took the floor and said that, only a hundred kilometers away from Cluj, there was a school where Romani children were treated differently, that they were physically separated from the non-Romani children and that this had happened exclusively because they were from a Romani community. Mr. Sarau's response was that it must be an isolated case.

After the workshop I took my team and asked the monitor to show us that school. We were really shocked by the conditions those children were exposed to. I had not been aware of that. One could only have thought about the existence of such schools. That example made me think about what action to undertake. Together with my colleagues I went back later to do some investigation on it. We spoke to the teachers, we visited the community and we even made a documentary. It was a short video film that was meant to serve as evidence of what we had seen in order to share it with other activists and organizations. We also filed complaints. At that time, it was the first complaint in Romania on segregation filed with the National Council for Combating Discrimination. In a couple of months, the National Council decided that there had been discrimination in that case and that measures to remedy that unacceptable situation should be taken.

It was through that case that we actually started to be aware of the existence of segregation. Even if that had been an issue before 2000, nobody was actually aware of its existence. We were simply unaware of it. I felt guilty about it. We always dealt with other issues, focusing on construc-

tion policies, working with or against the government on approving national policies regarding Roma discrimination, and somehow we got really far from the daily reality of the Romani community.

Q: So, at that workshop, you contradicted Sarau's statement...

C.B.: In fact, even if Sarau seemed at that time as an enemy to us, at that point he actually helped open our eyes. We all know the first thing to do is to acknowledge that there is a problem in order to remedy it.

Q: How did the issue get on the agenda of the government?

C.B.: In July 2003 a conference organized by the World Bank, Open Society Institute and European Commission entitled "Roma in an Expanding Europe" was held in Budapest. There was launched the idea of a Decade of Inclusion for Roma, and nine governments from the region, including the Government of Romania, agreed to the idea. It was then that the issue of Roma segregation received a focus on education, and was subsequently put on the political agenda as well.

Q: How long did it take the Romanian government to acknowledge those problems?

C.B.: Well, Sarau, for instance, is pretty aware of it now. In fact, he has become our spokesperson and stands up against the segregation of Roma. It took him four years to acknowledge its existence.

Q: Were there other activists who held certain views on this issue, either opposing/denying or supporting it?

C.B.: We, Romani CRISS, were the only ones who supported this issue, and we were called crazy at that time for doing it. Many did not believe that it was an issue. The former President of the Working Group of Roma Associations, which was supposed to negotiate with the Romanian government a strategy for Roma, did not believe that segregation was there. Even today there are many individuals, although fewer than in 2004, who still deny it and do not believe that there still is segregation of Romani people.

Q: Why do you think so?

C.B.: Within the Romani movement, there has been a negative attitude towards the younger generation of activists, dividing the two generations along the lines of perception and attitude. I think we were seen more or less as a radical group of people that would try to tackle an issue that used to be a taboo.

By now, segregation has become a policy issue, and everybody frequently talks about it. But at that time, it took courage to put this issue on our organization's agenda and to become really determined, both as an institution and as individuals, to do something about it to help those chil-

dren. We had the tools and all the necessary instruments to act on it. Therefore, we were prepared to file complaints, work on projects targeting community issues and so on; we took a stand and fought the system.

Q: What are the patterns or types of segregation in Romania?

C.B.: Virtually all forms of segregation—Roma-only schools, separate classes for Roma, even separate buildings for Roma and overrepresentation in special schools as well. Previously, I learned about this issue within the PHARE Program Implemented by the Ministry of Education where I was a member of the Steering Committee.

I visited various sites and I found shocking things. One such monitoring visit to Sibiu was quite interesting. We were taken to a special school for children with disabilities, or handicaps, as they called them. We saw children playing in the classrooms, interacting, talking to us even though we were complete strangers to them, so they looked completely average to me. I started asking questions, and based on the answers I came to the conclusion that there was nothing wrong with the children, but it was rather the system that was handicapped. All the children there had been classified as mentally disabled, and most of them were Romani children. I asked one of the teachers to show me some of the documents and files on each child. The teacher produced all the relevant papers, thousands of pages, social assessments and mental disability certificates issued by the Directorate the Child's Rights Protection. The teacher told me that except one or two isolated cases in fact the children do not have any mental problems they have just a disadvantaged social background. I was really surprised to find out that the institution whose mandate is to protect children is the one that actually abused children's rights... labeling them as handicapped while those children were unlucky to come from a socially disadvantaged family. So I was really shocked. I do not think these were isolated cases, I think this is a phenomenon whose magnitude we cannot even imagine. We do not have the capacity to monitor all schools that exist in Romania.

Q: Recently, Romanian officials from the Ministry of Education acknowledged or admitted that there has been segregation of Roma in Romania, in particular in the area of education, mentioning separate classes or schools, but they never mentioned special schools... "we are not like Hungary or Slovakia," they said.

C.B.: This is a transitory phase. First of all, it manifests itself in denying having a problem, exactly how it happened with segregation. It took the Romanian state three or four years to acknowledge the problem. Before that, it fully denied that Romania had been having segregation problems.

Step by step, we started to build an understanding... the so to speak political will of the Ministry of Education for acknowledging that there is a problem. The second step was taking specific steps to address the issue and to find solutions. The third step was to adopt necessary measures such as improving existing legislation or drafting new laws if necessary, the proper tools in order to tackle the issue of segregation. And, finally, the last step is implementation and remedying the situation. While Romania has achieved a lot in the first three steps, unfortunately it has not been efficient as regards the last one.

Q: You said that the exact extent of segregation is actually unknown. Do you think it is growing or decreasing? Or does it remain unchanged?

C.B.: I believe it is increasing, and this is happening due to the growing overall negative attitude non-Roma have towards the Romani minority. Non-Roma do not want Gypsies in the same school their children go to. This is clearly shown in the ethnic barometer research studies published every two or three years by the Open Society Foundation in Romania. Additionally, economic and social factors make this crisis deeper and deeper, as they clearly affect interethnic relations. This has its impact on the educational system.

Q: Special schools, as you said, are also a form of segregation. How do Romani children end up in such schools?

C.B.: The teacher I met in that particular example said the following: "In fact, these children are not handicapped... but because they come from disadvantaged families where parents are often alcohol addicts or are long-term unemployed, they are classified by the Children's Rights Protection Authority as mentally disabled children, hence they receive additional funding."

Such children have an extended special teaching program which starts at 8 a.m. and lasts until 4 p.m. They are provided lunch and receive some material help—10 euros or so. This is a package that a child classified as being mentally disabled is entitled to receive. Also the teachers who work in such schools receive additional financial benefits. It is attractive for families themselves, even if they do not have any problems at home. Parents may be easily led to believe that, in addition to financial incentives, their children will receive better care and better food than what they can provide.

Q: Are there any other factors that play a role in segregating Romani children? If yes, at which levels?

C.B.: At all levels, I have to say. Beginning with the level of those non-Romani parents who pressure school and municipal authorities to

“resolve” the Roma issue, although it is not they who decide these issues. The real responsibility lies with the decision makers, from school teachers and headmasters through mayors of municipalities up to the governmental level.

Often officials of different levels point at each other: one may hear the minister of education say that they have a relevant policy and a special ministerial order to tackle this issue and that actually it is the county inspectorates who should be blamed for not implementing their policies. School inspectors would say: “Yes, we want to desegregate and we know that this is not good... but we are facing resistance from the local schools.” On the level of schools, principals similarly pass the ball: “The obstacle is the mayor political interest which is driven by the interests of non-Romani parents.” The mayors say the following: “Yes, but I need the votes... and Romanians do not want to have their children in the same school with Romani children, that is why I’m going to build a new school close to the community for them to be easily accessed.”

In the end, it is Roma themselves who are blamed for the present situation.

Q: What about other people who may play a role in this issue, for instance, project implementers? What is their role in maintaining the “status quo” of the segregation?

C.B.: For instance, under the auspices of the Ministry of Education a program managed by Gheorghe Sarau was based on language and history which was very well-intended. I am all for it because this is about us and who we are, it is about cultivating our identity. Language is actually the core of our existence. We would not be talking about a nation if there were not for a language.

The problem is that schools use this program to segregate the children, to place them separately... even though it says very clearly that this is an optional additional class which children of the Romani community may or may not chose. It is a choice that a Romani family can make. But, in most of the cases, this is an excuse for schools to place Romani children in the Gypsy classes.

Actually, this is what is going to happen with the new education act which is now debated in the Parliament. It says: “For those minority groups that wish to study in their own language, additional funding will be provided,” which means that if a school decides to expand its curriculum and include the study of the Romani language, a process of “hunting” for Romani children can easily take place in order to receive more funds. So this is the risk which may happen in the coming period.

Q: Do you think there is tension between the human rights approach and the minority rights approach in relation to education?

C.B.: I would not say tension, rather competition, if any. There are those who are trying to fight segregation through litigation, they are “de-segregators.” On the other hand, I see those who work on establishing more classes and schools that are open to include the Romani language. It is not a tension. I think everybody has their own agenda, the problem here is rather the coordination and harmonization of the different approaches, because there is no contradiction between the two, as I understand it.

Q: Trying to understand the whole process as you described it: there was this group of activists who imported a concept and have been trying to promote it with the help of international institutions—be it the OSI, the World Bank, or the European Commission. Is this correct?

C.B.: What we are missing in this situation is, first of all, the support of the Romani community. We all know that segregation is bad. But the average Romani people are not aware of how harmful it is. Also, as I mentioned earlier, Roma often show a lack of interest in education: it is becoming less and less important because the link between education and the labor market is not as evident as it used to be.

Q: You mentioned at some point that there are voices saying that Roma themselves in a way contribute to the preservation of segregation. Why is that?

C.B.: Yes, there are a number of people who prefer to keep the community segregated. I am not saying that desegregation is the only solution, but that in most cases we do have to fight segregation because this is the most aggressive form of discrimination. Children who attend segregated schools, and quite frequently their parents too, cannot understand why it is so harmful. When the segregated school is in the middle of the Romani neighborhood, it is an issue of logistics and security. If you had small children, would you take them ten kilometers away from your home if you had a school in the vicinity? This is how an average family sees it.

Q: What can be the solution in such cases?

C.B.: I do not have a recipe for all the issues. First of all, we have to avoid giving general solutions to various situations. This would be the worst thing that activists or experts could do, because various situations can be so different each!

Q: Examining the issue from the perspective of those non-Romani parents who do not want their children to attend the same school as Romani children, why not create schools for Roma and improve the

quality of education in those schools? Would not that be a solution to the problem?

C.B.: In most cases, such an environment creates a complex, unfavorable situation: unmotivated teachers, lack of infrastructure, oversimplified curriculum, and so on. Even if a special solution may initially look acceptable—"let's build a school and make everybody happy"—it may, eventually, be a failure.

I am not against this idea in principle. If local circumstances require building a new school where the quality of education is such that, later on, the child will be ready to compete on the labor market, I am all for it, I would not care in the end. But experience shows that this is not possible.

Q: In Romania, Romani CRISS and a group of monitors have played an important role in advocating for desegregation. Have there been others who played a role in fighting segregation in Romania?

C.B.: Later on it became a joint initiative with many other players, including non-Romani organizations such as UNICEF and Save the Children, as well as other "stakeholders" who joined the initiatives and took a stand against segregation.

Q: What are the main arguments for promoting school desegregation in Romania?

C.B.: There are numerous studies and research reports that demonstrate the harmful effects of segregation. While this may seem dry theoretic reasoning, in practice, I have not seen a single Romani child come from a segregated environment and still succeed in life. This is a powerful indicator to me.

Q: Was there anything in the programs of political parties on this issue? Has there been any candidate, Romani or non-Romani, who has spoken out against segregation?

C.B.: No, I don't think so... we have not gotten there yet.

Q: What was the first measure on promoting desegregation in Romania?

C.B.: There was a notification which was of a lower level than a ministerial order. It was like a warning addressed to county inspectorates that made its way to local schools. It contained a definition of what segregation was, and that it is a form of discrimination. It stated what county inspectorates should do in order to prevent it, etc. It was the first stage of acknowledging the issue.

Q: What happened after it was adopted?

C.B.: There were no effective outcomes out of it, it only made people start talking about the issue. For example, when I was visiting schools

during monitoring missions and asked if there was segregation in the given school, there was always denial. And, of course, they did not have any desegregation plan.

Q: What were the next measures adopted on desegregation?

C.B.: The next measure was a ministerial order which, was much more powerful, as a legal regulation, and still it was missing something. Like a key, when you have a well-designed home and you have more or less everything you need inside it but you are missing the key to it. The ministry drafted quite a good order, but they were missing a methodology on implementing the order and they also were missing the establishments of the experts' commission. I kept emphasizing that a solution should be identified for each specific case, because you cannot define general measures without acknowledging the specificity and the diversity which can be found at the local level.

Q: Why would you need a methodology for a ministerial order?

C.B.: This is how the Romanian system works when it comes to laws or ordinances: methodology is elaborated for pieces of legislation on how to implement them.

Q: By now, there are certain desegregation initiatives that have almost been implemented.

C.B.: Definitely, we cannot say that nothing has been done. Individual measures have been taken here and there... locally, maybe regionally.

Q: Who financed the first desegregation measures in Romania?

C.B.: They were part of the PHARE program. In the initial stage, they very generally targeted socially disadvantaged children, but in the second PHARE program they made it more specific and targeted desegregation.

Q: What were the results of those PHARE measures on desegregation? Could you share some positive and negative aspects?

C.B.: For example, in the framework of training and debate sessions, they provided several Romani activists with a unique opportunity to meet hundreds of teachers who work in segregated schools. It was an opportunity to challenge a certain mentality. It was amazing to experience how on the third, fourth or fifth day of training people started to recognize that they were actually having a problem. I think this is what the PHARE program did—it gave an impetus.

On the negative side, for example, they think too much of a school as being a physical investment which needs improved infrastructure. Thus the PHARE programs failed to unfold the details of the problem of segregation. Of course they did a lot of facility investments. I think we pay too much attention to those who perpetuate segregation and much less to its

victims. Nobody treats the sickness of the victims, and in our case those are the children.

Q: Is school desegregation a state policy?

C.B.: I think we have arrived at a critical point at which it may, or may not, define desegregation being part of the mainstream policy. This is what is happening with the adoption of the new education act. There is the main law which is designed for the system's needs, then there are ministerial orders, such as the one on desegregation which is like a small river that is going either parallel or away from the main stream, and I am afraid that Romani NGOs are not able to see this yet, they are standing too close to the picture and cannot get an overall understanding of it.

Q: Are they too weak? Are they unprepared?

C.B.: No, I think they are simply overwhelmed by many other issues. They are missing the point when chasing a dozen of different directions—one day litigation or health-related issues, the next day housing issues, etc.

Q: Who is putting this pressure on them?

C.B.: I think it is a financial issue. This may have to do with the opportunity created by the Structural Funds and a multitude of program opportunities.

Q: Going back to the metaphor you used about the main river and small streams. Where would you place desegregation in this metaphor?

C.B.: We have to dig a lot. When I say “we” I am not thinking only of Roma because they cannot succeed on their own. We need to work with the non-Roma, digging in order to make sure that the small river gets to the main “stream”—or “mainstream,” the big river. It is a challenge, building coalitions, joining efforts with others is the key to a success story at the end of the road.

Q: How were the results of desegregation reported to the public, by whom and how?

C.B.: It was very sporadic, there was no strategy for achieving public support; a number of statements were made here and there. I think this is another weak point for all of us.

Q: You mentioned an important institution in this interview—the CNCD, the specialized anti-discrimination body. What is their communication like? For example, what was their decision in the alleged segregation cases?

C.B.: They do not have any communication beside annual reports of the institution which are presented for approval to the Parliament, and hopefully this is one way of informing politicians about the issue. In fact,

there was no communication strategy and it is due to the lack of knowledge and capacity of NGOs to develop this.

First, we need a vision and it should be shared by most of us. This is what we are lacking. Second, there is a need for a strategy by coordination. I mean there is a variety of NGOs which are today in a competitive phase. They are lacking a lot in my view—social, economic background. But I am quite optimistic and maybe one day they will say... “look, this is what we have achieved” during ten years of working together.

Q: Can you make a brief conclusion in a single phrase about the desegregation process in Romania so far?

C.B.: I cannot do it in one sentence, but what I can say in conclusion is that desegregation requires, first of all, long term commitment from all of us; it cannot happen overnight or in a year. It is a long process of changing attitudes and mentality, changing the system, and, finally, changing ourselves. It is about changing the way we see the issue and think about it, what we have not succeeded in, or managed to accomplish, during these six-seven years is the support of others. Making others understand that it is in the interest of the mainstream society that small streams have to join the big rivers, otherwise the big rivers can loose strength and that will be a loss for everybody.

Q: This sounds like the main message of this interview. Which shall, in your view, be the next steps of desegregation in Romania and in Europe?

C.B.: Apart from a new overarching strategy and building cooperation, which I mentioned earlier in the interview, not to ignore or leave out the confrontation strategy. Confrontation brought us where we are today. What we have achieved today is due to confronting the system when we stood up and fought. There is also a need for more strategic cases filed with the National Council and the Court, a need for more decisions and more cases at the European Court of Human Rights.

Q: ...and on the European level?

C.B.: Depends on the country. The “one size fits all” approach cannot work universally. The national context has to be considered because it matters a lot—from the perspective of political parties, decision makers, the minister of education, the level of NGO capacity, then the current level of acknowledging, understanding or denying the issue, and so on.

Q: My last question: how do you see the role of international organizations and donors on the desegregation issue at the European level?

C.B.: They cannot see their limitations. From a donor's perspective, sometimes money does not solve the problem. I think it is more than that, and I am saying this from my experience. I have arrived at the understanding that money is only a modest part of the overall picture. So from this perspective donors have their limitations as well. International organizations do have a key role from the point of view of keeping the issue on the political agenda, and raising it in various contexts so it can eventually be addressed by national governments.

Roma School Desegregation Policies in Romania

FLORIN MOISA

*Motto: I haven't seen a single Romani child come from
a segregated environment and still succeed in
life.*

— Costel Bercus, Roma Education Fund

In education, the best words to describe any progress are “not enough,” and, when talking about school desegregation, there is plenty of room for improvement.¹ School segregation seems to be a long-term presence in the Romanian educational system, and only after 2003 did it become an issue debatable by educators, Roma activists, and politicians (see the interview with Costel Bercus in this book). The issue has been shaped through the years by a host of factors, including the European Union accession process, the emergence of anti-discrimination legislation, the improved ability of Roma activists to monitor discrimination cases, and international interest in the subject.

It is obvious that the issue of school desegregation appeared after the progress made in the adoption of Romania's first anti-discrimination law in 2000,² as part of the pre-accession to the European Union by fulfilling the so-called Copenhagen criteria for the protection of national minorities.³ Romania was one of the accession countries that started quite early on the path to implement the “Race Directive.”⁴ The early adoption of the

¹ Interview with Liliana Preoteasa, General Director, General Directorate Education and Long Life Learning, May 21, 2009 in Bucharest.

² Government Ordinance no. 137/2000 on the elimination of all forms of discrimination. An English version is available on the Internet at: http://www.minelres.lv/NationalLegislation/Romania/Romania_antidiscrim_English.htm

³ Membership requires that a candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for, and protection of, minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic, and monetary union.

⁴ Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the *Official Journal L 180, 19/07/2000 P. 0022 – 0026*. It is available at <http://eur-lex.europa.eu/>

anti-discrimination ordinance⁵ has been praised by international actors and by Romanian civil society. Until 2006, the law was amended several times to bring it in line with the Race Equality Directive (RED).⁶ Currently it exceeds the minimum standards imposed by RED.⁷

The activity of the National Council for Combating Discrimination (NCCD) played a role in the awareness of Romanian society to discrimination. Out of 4,260 complaints registered, 541 (12.6 percent) were related to ethnicity, and out of those only seven decisions were made in relation to the school segregation issue for direct or indirect discrimination.⁸ Perhaps the most relevant is the so-called Cehei case. It was the first case when NCCD sanctioned the school system for segregating Roma children.⁹ In fact, Roma NGOs contributed decisively to bring about the desired change right from the beginning. In the case of the Cehei school (Salaj county), Roma children were placed in an annex to the main school building, separately, under bad conditions and without any real attention

LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML, last visited on June 6, 2009.

⁵ Ordinance no. 137/2000.

⁶ A group of active organizations interested in the issue gathered together in an “anti-discrimination coalition” and launched advocacy activities in order to promote changes of the law, for a better compliance with the principles of the Race Directive or recommended by various other pieces of international legislation, such as the General Recommendations of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe. The following NGOs are between members of the anti-discrimination coalition: Active Watch – Press Monitoring Agency, ACCEPT Association, CRJ – The Centre of Legal Resources, The Association for the Protection of Human Rights – Helsinki Committee, CPE – The Centre Partnership for Equality, ROMANI CRISS, “Pro Europe” League, Roma Civic Alliance, Public Policy Institute, etc.

⁷ Several revisions of the legislation were made over the years, defining the National Council for Combating Discrimination (NCCD) as an autonomous public body, responsible for activities in the area of anti-discrimination, undertaking activities on prevention of acts of discrimination, mediation, investigation, monitoring, taking official notes and sanctioning acts of discrimination and also provision of legal assistance to victims of discrimination. The NCCD is placed under parliamentary control, with its own procedures and strategies similar to judicial ones. The visibility of the NCCD has increased recently after adoption of several controversial decisions, including one against the President of Romania, as reported by Dezideriu Gergely, member of the Board of the National Council for Combating Discrimination, September 11th, 2009, Bucharest.

⁸ Compiled from annual NCCD reports, data available from 2002 until August 2010, a total of 4,260 complaints.

⁹ NCCD Decision no. 218/23.06.2003, sanctioning the Cehei School for direct discrimination of Roma children.

to their performance from the school.¹⁰ The intervention of Romani CRISS was essential and opened the road for other complaints.

It is difficult to assess how efficient the anti-discrimination law and anti-discrimination provisions from the education law have been in promoting school desegregation, even if it is obvious that NCCD activity, ministry orders and the PHARE Programs together produced a downsize effect. While there is a certain progress in acknowledging the phenomenon,¹¹ desegregation cannot be described as an effective public policy, and the NCCD did not have a decisive and straightforward approach, proved in decisions taken against schools,¹² all of them being “warnings” and “recommendations,” regardless if the Council found direct or indirect discrimination. Segregation, even if forbidden according to ministry order, remains to be “eradicated.”¹³ The fact that segregation is banned does not translate into desegregation policies, as there is no authority inside the Ministry of Education to implement it.

In regard to special and special integrated education, the new National Education Law, even if it does not specifically speak of school segregation, declares that the “abusive diagnosis of children based on race, ethnicity, language, religion, membership of a disadvantaged category, as well as any other criterion, which determines their inclusion in classes with special educational needs, shall be punished.”¹⁴

As mentioned earlier, the anti-discrimination legislation was a condition of Romania’s EU accession process. “The Partnership for Accession, 1999” emphasized the need for consolidation of the dialogue between the government and the Roma community, in order to develop and implement a strategy aimed at improving the social and economic condition of the Roma, and implement anti-discrimination measures.¹⁵

In 2001 Roma civil society activists promoted inclusion of anti-discrimination principles in the Governmental Strategy for Improvement of the Condition of the Roma.¹⁶ The initial Roma Strategy, articulated under pres-

¹⁰ See interview with Costel Bercus in this book.

¹¹ Decade Watch, “Roma activists Assess,” 37.

¹² Compiled from annual NCCD reports, data available from 2002 until August 2010, seven decisions identified on school segregation.

¹³ Decade Watch, “Romania Report, Mid Term Evaluation,” 34.

¹⁴ National Education Law, Art. 50 (3)

¹⁵ Ionescu, *Public Policies for Roma*, 39.

¹⁶ Government Decision no. 430/2001, for adoption of the Governmental Strategy for Improvement of the Condition of Roma. It was modified by Government Decision no. 522/2006, getting closer to the principles promoted by the Decade of Roma Inclusion.

sure from the pre-accession governmental commitments,¹⁷ but also by the Roma NGOs who were advocating for a comprehensive approach, included references to the principle of non-discrimination of Roma in its preamble, in its general principles, as well in some of the measures/objectives of the thematic areas included.¹⁸ But still, at the time of adoption, the issue of school desegregation was not included as a specific objective in the action plan of measures of the Strategy. Interestingly, the revising document adopted in 2006¹⁹ has omitted to include objectives and measures regarding the issue of non-discrimination of the Roma population, most probably considering that the activity of the National Council for Combating Discrimination covers the issue as a mainstream measure. This failure to include segregation as a specific measure indicates the weak level of coordination among government structures as the Ministry of Education had at that time desegregation as a priority, even in PHARE programming. Desegregation is mentioned briefly in the new strategic document under the master plan of measures.²⁰

Starting with the year 2000, NGOs became more active and involved in anti-discrimination programs and awareness campaigns, with probably the most active of them being Romani CRISS,²¹ which created its own Human Rights Department with a network of human rights monitors across the country. In the education area, CRISS initiated a "Cooperation Memorandum for Ensuring the Access of Roma Children and Youth to Quality Education Through School Desegregation and the Promotion of Education for Identity." It was signed by the Ministry of Education and Research, the National Agency for Roma, the National Council for Combating Discrimination, OSCE/ODIHR, the Roma Center "Amare Rromentza," the Intercultural Institute Timișoara, Save the Children, the Project on Ethnic Relations Regional Center and Ovidiu Rom. More recently, the Roma Civic Alliance,²² consisting of nineteen Roma NGOs,

¹⁷ See the Copenhagen Criteria on page 283, footnote 3.

¹⁸ EUMAP, "Monitoring the EU Accession."

¹⁹ Government Decision no. 522/2006, Governmental Strategy for Improvement of the Condition of Roma.

²⁰ Government Decision no. 522/2006, Governmental Strategy for Improvement of the Condition of Roma, Master Plan of Measures for 2006–2008, measure no. 31: "stimulating pre-school, school and university participation of the Roma through affirmative action measures and measures that promote desegregation and interdiction of segregation in schools based on ethnic criteria."

²¹ For more information on the activities of Romani CRISS visit the web page www.romanicriss.org

²² For more information on the activities of ACRR visit the web page www.acrr.ro

got involved in the area of promoting human rights, lobbying and advocacy, including policy change in education, specifically desegregation.

The activity of such nongovernmental organizations was made possible with financial support from several international donors, public and private. The public ones are best represented by the European Union pre-accession programs, especially PHARE, with a significant investment in access to education for the Roma. It is obvious that the capacity of Roma NGOs to deal with education and school segregation issues improved significantly, in a synergetic manner, due to the funds available for the Roma related issues, but also as a result of other factors like the affirmative measures generating an increasing number of Roma higher education graduates, increasing awareness on the issue.

The Open Society Institute is the most relevant private donor for the desegregation issue, piloting the first desegregation projects in Bulgaria and putting the topic on the public agenda. In the context of the Decade of Roma Inclusion initiative, starting with 2005, a new structure was established: the Roma Education Fund (REF) aimed to close the gap in educational outcomes between Roma and non-Roma.²³ In 2009, the Roma Education Fund in Romania was set up in order to promote educational programs and partnerships, benefiting from Romania's accession to the Structural Funds context.

It is useful to review the most important concepts which have been used in the last decade on Roma education, ones that have evolved together with the new legal developments. During the 1990s the most relevant word was “integration” of Roma students in schools—namely to reduce school drop-outs, increase school registration, increase participation in education, and so on. Integration, seen as a form of harmonization of parts into a whole,²⁴ did not emphasize much the needs of different groups to remain different, or to preserve their cultural heritage, and as such was not necessary received positively by the Roma community. On the other hand, the concept of “intercultural education” was commonly used at that time, in a national transition context in which the issue of ethnic diversity was not welcomed by the majority, and was also not satisfactory. A new concept came into use, that of “multicultural education,” defined by the majority of authors in relation to educational equity for all, creation of equal opportunities for students from diverse groups—ethnic,

²³ For more information on the Decade of Roma Inclusion, visit the web page www.romadecade.org or www.romaeducationfund.hu

²⁴ See the Romanian Explicative Dictionary for more nuances on the word “integration.”

social, cultural—which generated interesting developments even at the higher education level.²⁵

After the year 2000, during the pre-accession process to the European Union, ensuring the “access to education for disadvantaged groups with a special focus on Roma” was a strong presence in the life of the County School Inspectorates. In this context, the concepts of “inclusive education,” “inclusive school,” became the milestones of the efforts of relevant actors.

Inclusive education is defined²⁶ as,

a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and amendments in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children.

The Romanian Government has defined inclusive education as, “a permanent process of improving the school, aimed at exploiting the existing resources, especially human ones, to support participation in the education of all persons from the community.”²⁷ The inclusive school unit is defined as an “education unit in which education for all children is ensured and it represents the most effective means for combating discriminatory attitudes.” The UNESCO and government definition of inclusive school show certain differences. While UNESCO states the responsibility of the system to educate all children, the government is looking for a better use of existing resources and support for participation in the education of all. These definitions will have a direct result in education policies promoted by the government, policies that are going to put the responsibility, again, on the child and not on the system, a system that is not ready to deal with the specific needs of the child.

²⁵ See, for example, the definition of the multicultural character of the Babes-Bolyai University in Cluj Napoca at http://www.ubbcluj.ro/en/despre/misiune/caracter_multicultural.html. In order to respect this multicultural structure, all university bodies (and in particular the governing bodies) are organized so as to take into account the three ethnic and linguistic components—Romanian, Hungarian, and German.

²⁶ UNESCO, *Guidelines for inclusion*, 13.

²⁷ According to Annex 1 to the Government Decision no. 1251/2005 on measures to improve the learning, training, compensation, recovery and special protection of children/students with special educational needs in the special and special integrate educational system, Monitorul Oficial no. 977/2005.

In policy development, plans for educational policies had to be developed as a result of Romania's involvement in two processes: the Decade of Roma Inclusion and EU accession. Following the 2003 Budapest conference, where the idea was presented and its launch in 2005, all participating governments in the Decade of Roma Inclusion have coordinated to develop national action plans in four priority areas, including education. All these countries acknowledged school segregation of Roma as a priority in their education plans, and pledged to eliminate segregation as part of their general pledge to close the gap between Roma and non-Roma over the following ten years. In spite of its active role by assuming the first Decade presidency between 2005 and 2006,²⁸ Romania did not have the political will to officially adopt the Decade Action Plans.²⁹

The Romanian Government had to elaborate also new programmatic documents connected to the EU accession process, one of the most important of these being the Joint Inclusion Memorandum (JIM),³⁰ a policy document which identifies the key issues and challenges facing Romania and outlines directions for action in the field of social inclusion for vulnerable groups. The JIM directs attention to early child education and development of an inclusive educational system and notes the “significant polarization of the quality of education” while discussing the issue of school segregation as “unwanted ethnic separation phenomenon” in classes in which Roma are predominant. School segregation is seen more as a consequence of “residential segregation,” cases where there is a much lower quality of education of the Roma children and other poor children, ignoring other causes, including racism and social alienation of Roma.³¹

The word “inclusive” became a common term used by the state and NGO and structures like the National Commission for Social Inclusion,³² which was established to publish regular annual reports on the status of social inclusion.³³ The “comprehensive social inclusion” concept—

²⁸ For more details on the Decade Romanian Presidency, see http://www.anr.gov.ro/docs/rapoarte/Raport_un_an_de_Presedentie-deceniu%20_%28en%29.pdf

²⁹ See Romanian Education Action Plan at http://www.romadecade.org/files/downloads/Decade%20Documents/decenului_de_incluziune_a_romilor_domeniul_educatiei.pdf

³⁰ Joint Inclusion Memorandum (Memorandumul Comun în Domeniul Incluziunii Sociale) adopted in 2005, see <http://www.caspis.ro/downloads/JIM.pdf>

³¹ Joint Inclusion Memorandum of Romania, 24.

³² Government Decision no. 1217/2006 on setting-up the national mechanism for promotion of social inclusion in Romania.

³³ See <http://www.mmuncii.ro/ro/628-view.html> for several reports on the Ministry of Labor, Family and Social Protection

combining and balancing the measures targeting the vulnerable groups with mainstream measures—became the “new game in town,” accepted and used widely by different actors.

In 2004, after pressure from Roma NGOs which documented several cases of segregation all over the country, the Ministry of Education and Research adopted,³⁴ for the first time, a set of norms designed to combat school segregation, and presented a definition of school segregation stated as a very severe form of discrimination:

Segregation is a severe form of discrimination. Within the educational system, with the exception of those schools or classes where Romani is the teaching language, segregation consists of physical separation, whether intentionally or not, of Roma children from non-Roma children in schools, classes buildings and other facilities in which the number of Roma students compared to the number of non-Roma students is disproportionately higher as compared the percentage of the Roma children of school age within the total school age population in a territorial administrative unit, i.e. city or town. Segregation has as a direct consequence unequal access to quality education. Separation in kindergartens and schools leads always to a lower quality education than in those cohorts, classes or schools with another ethnic majority of school population. [...] the Ministry of Education and Research prohibits the setting up of pre-school, primary and lower secondary classes comprising exclusively or mainly Roma students. This way of pupils' assignment represents a form of segregation, irrespective of the explanation.

The 2004 Ministry Notification proposed several solutions for combating segregation in education:

- Setting up mixed cohorts of students at all levels of education; the transportation of Roma students in schools with another ethnic majority, particularly for children in segregated residential communities;
- shared use of school facilities and existing facilities;
- training and employment of Roma school mediators;
- providing additional hours for catching up to children who have learning difficulties;
- promoting ethnic identity of Roma in mixed schools, including within the curriculum;
- hiring Roma teachers in schools that provide teaching specific curriculum (Romani language and Roma history);
- teacher training in inclusive education to ensure an appropriate educational environment of a multi-ethnic environment;

³⁴ MER Notification 29323, April 20·2004, on school segregation.

- facilitate transfer students seeking a balance between the proportion of Roma and non-Roma pupils in a school;
- informing Roma communities about the quality education in mixed schools through regular visits to Roma communities and involving Roma parents in school decisions;
- informing all parents about the benefits of inclusive education in order to deter those seeking to incorporate their children in classes without Roma students or organize separate classes for Roma.

In October 2007, the Ministry of Education, Research and Youth adopted a new document, Ministry Order No. 1540 banning school segregation and also providing a methodology for preventing and combating it. The definition of segregation was the same as the one provided in the Notification. The Order had as its main objective the “prevention, banning and elimination of segregation, [which is] seen as a severe form of discrimination, with negative consequences on the equal access of children to quality education.” According to the Order, “starting in the school year 2007–2008, setting up of first and fifth grade segregated classes consisting of majority or entirely Roma children” was banned. It was the first time when the Ministry of Education, Research and Youth used the term “educational policy” that aims at “ensuring equity in education, in terms of equal access to all forms of education but also in terms of quality education for all children without discrimination caused by ethnicity or language.” In the annex on methodology, segregation is described as “a severe form of discrimination, having as consequence unequal access of children to quality education, breaking up of the right to education in equality conditions, breaking up of human dignity.”

Article 3 of the Methodology describes the negative consequences—social and educational:

- difficulty in attracting students in education—high level of non-education;
- inability to retain students in education—high school drop-out;
- inability to attract and retain qualified teachers in those schools, which affects the quality of education;
- inability to prepare students to the standards required for the transition to higher forms of schooling;
- maintain prejudices and stereotypes, both for the majority population and for the Roma;

- contribute to the formation of negative representations of school capacity to generate social progress.

Article 4 of the Methodology describes “practices that lead to segregation,” such as:

- Schooling of Roma children in residentially segregated schools, like schools within or adjacent to a Roma compact neighborhood where there is no other nearby school where all students or a very high percentage are Roma.
- Guidance and deliberate targeting of Roma children to segregated kindergartens/schools within or near neighborhoods inhabited by Roma, in conditions where there are other mixed kindergartens/schools available.
- Placement of all children who have not attended kindergarten in the same first class.
- Deliberate placement in a mixed school of Roma students into groups/classes/buildings/other facilities for them only.
- Separation resulting from practices such as placing a single class of children who entered school late or preserved in classes where Roma children are transferred from a segregated school in kindergarten or a mixed school.

According to some researchers of the phenomenon,³⁵ the use of the term “segregated schools” in the Romanian case means a de facto segregation, a consequence not of a certain law or public policy, but rather a continuation of a certain tradition, prejudices, and inertia. The segregated schools are usually located nearby compact Roma communities, communities that are usually characterized by high poverty. Even if there are no legal barriers in registering or transferring children to other schools, in practice there are a set of economic, bureaucratic, and mentality barriers.³⁶

Even though the desegregation process started in 2004, there has been no relevant study published by the Ministry of Education and Research regarding the extent of the phenomenon, a description of it, or of solutions. The Impact Study on the PHARE program’s “Access to Education for Disadvantaged Groups”³⁷ is based on a rather qualitative methodology,

³⁵ Surdu, “Desegregating Roma schools.”

³⁶ Surdu, *Segregare scolara si reproducerea sociala a inegalitatilor*.

³⁷ Ulrich, “PHARE programs,” 91.

and presents some data: in 44 percent of the studied schools (a sample of 45 schools at national level) residential segregation exists, while in 29 percent of the schools there are parallel classes with an unbalanced proportion of Roma pupils; for another seven percent of schools there exists both residential and class segregation. In other words, approximately 80 percent of schools in the sample were segregated. Even if one takes into consideration that the schools included were ones considered to have a high risk of segregation, the percentage is very high. Especially considering that in 65 percent of these schools the “Access to Education” program was implemented and, as a result, was supposed to have led to integration.

Romani CRISS, with financial support from UNICEF, has prepared a report on the result of desegregation measures—“Monitoring the Implementation of Desegregation Measures in Romania.”³⁸ The report presents data on the extent of segregation, based on a sample of 134 schools from nine counties and using a complex methodology—observation, document analysis, in-depth interviews, and questionnaires. The definition of a segregated school or class used by the report is referring to an over 50 percent presence of the Roma pupils, while schools with a high risk of segregation are the ones with classes having over 30 percent of Roma pupils. The results of the above mentioned study show a 67 percent of the schools present segregation at the class or school level, and in 63 percent of the schools the Ministry Order 1540/2007 was not implemented.³⁹ The quality of the teaching staff was questionable, in 67.5 percent of the schools there are unqualified teachers, and in 97 percent of the cases there were changes in the teaching staff over the last year.

A 2010 research report from the Community Development Agency “Together,” entitled “A School for All? Access of the Roma Children to Quality Education,” funded also by UNICEF Romania presents data from 77 schools and 23 kindergartens from 70 communities.⁴⁰ School segregation was defined here taking into consideration the proportion of Roma children in school/classes: for residential segregation, the extent of segregation was calculated using the distance from the community of less than one kilometer and a proportion of Roma children of over 50 percent; for non-residential segregation, the extent of segregation was calculated using the proportion of Roma children under 50 percent in the school, existence of classes with over 50 percent Roma children, and a distance of over one

³⁸ Surdu, “Monitorizarea aplicării măsurilor împotriva segregării școlare în România.”

³⁹ *Ibid.*, 25, 2–3.

⁴⁰ Duminica, “A School for All?”

kilometer to the closest Roma community. Out of the 100 educational units, segregation was found in 31 percent of the cases (16 percent residential, 15 percent non-residential). One of the conclusions of the research is that in schools with a large proportion of Roma, there are often several deficits, from a lack of material resources, to a lack of quality teachers, to discrimination in its most severe form—segregation. According to the authors of the study, there is an increasing awareness among the school staff about discrimination and, as a result, the development of a politically correct language and a tendency to “make up the reality,” to deny the existence of segregation, even in very visible cases.

Based on the above mentioned data and having in mind the limits of the research described, one can see the difficulty of presenting reliable data on the extent of segregation. In spite of the specific desegregation requirement in the Notification and Ministry Order, there is no systematic collection of data on the extent and types of segregation in Romanian schools. It is relevant to say that even if there was a significant package of financial resources available through the PHARE programs, the segregation phenomenon was not properly studied.

During the communist period, the state promoted certain egalitarian policies. Everyone, including Roma, had access to education, housing and employment. There were fewer visible discrepancies between the Roma and the majority of families with many children. But it is certain that the Roma were subject to assimilation rather than to integration. Also, in schools, Romani language was not used and a large number of Roma children were directed to special schools.

The communist regime pursued various policies regarding the Roma, what they called the “Gypsy problem.” First, they were forcibly settled, and later their very existence was ignored in the hope of “converting” them into “good citizens and disciplined workers.”⁴¹ The Roma had access to jobs in rural state-owned farms, and as unskilled workers in factories, although the prejudices continued as well as the social exclusion, even if a certain improvement of their social condition had occurred.

Still, even if data collection is scarce, it is well-known that the segregated classes and schools remained a common practice. Its real proof is the continuation of this phenomenon after 1989. Nevertheless, the communist authorities in Romania pursued a different strategy for assimilating Roma. Unlike other countries where large Roma communities were maintained compact, in Romania the Communist Party, especially under Ceausescu,

⁴¹ Barany, “The Socio-Economic Impact of Regime Change in Eastern Europe,” 64–113.

actively promoted assimilation of Roma by mixing population. It was considered that ethnicity is a decadent concept, and what really unites the society is the common conscience of the working class. Thus, segregation of Roma was not very visible and was not supported by the authorities.

The National Council for Combating Discrimination has monitored the perception and attitudes of the population towards the discrimination phenomenon, offering an interesting picture of the educational issues. In 2008, the NCCD research⁴² using a representative national sample, questioned the participants on their degree of agreement with some statements about national minorities in Romania, including one on segregation in education: “Should there be special schools and classes for Roma children?” Almost half of the respondents disagreed with the statement (49 percent) (22 percent indicated “total disagreement,” and 27 percent “disagreement”), while one fifth of the population (20 percent), chose “neither disagree nor agree.” On the other hand, almost a quarter, (23 percent) agreed with the existence of special schools or classes for Roma children (out of which 15 percent responded with “agreement” and 8 percent with “total agreement”).

A similar research in 2009 at the national level used the same question and statement.⁴³ The results showed that close to half of the population disagreed with the statement, “There should be special schools and classes for Roma children” (46.2 percent) and 17.2 percent chose “neither disagree nor agree.” Approximately one third of the population (31.2 percent) agreed with the existence of special schools and classes for Roma children. The “disagreement” percentage in the two studies decreased from 49 percent to 46.2 percent in 2009, and the agreement of the population with the existence of special schools and classes for Roma children increased from 23 percent in 2008 to 31.2 percent in 2009.

Unfortunately, there are no similar studies to compare the level of acceptance of school segregation. Two recent pieces of research approach similar topics. First, a 2007 research of the Open Society Foundation Romania,⁴⁴ estimates a 50 percent rate of agreement among the population with the statement, “Roma and non-Roma children should learn in the same classroom,” which aligns with previous findings. A second study, the 2009 Barometer of Inter-ethnic Relationships,⁴⁵ questioned the partici-

⁴² “Perceptions and Attitudes of the Romanian Population Towards Discrimination Phenomenon.”

⁴³ “Discrimination Phenomenon In Romania—Perceptions and Attitudes, August 2009.”

⁴⁴ Badescu, “Roma Inclusion Barometer,” 60.

⁴⁵ “Barometer of Inter-ethnic Relationships.”

pants on the following: “is it right or wrong ... for Roma and non-Roma students to learn in the same classroom?” The results are slightly different from the ones above, in terms of a higher level of acceptance: a little over three-quarters (77 percent) approve the statement, while 59.1 percent believe that it is good and 17.9 percent that it is very good for the two groups to learn in the same classroom.

The 2009 Barometer of Inter-Ethnic Relationships offered another perspective—that of the Roma population. The same opinion question addressed to Roma was answered by a large majority approval of the statement: 98.2 percent of respondents considered it good (29.8 percent) or very good (68.4 percent) that “Roma and non-Roma students should learn in the same classroom.” In fact, one can see that after the adoption, in October 2007, of the new order of the Ministry of Education, Research and Youth for the interdiction of school segregation, the perception and attitudes of at least a part of the population deteriorated, more agreement with segregation appeared.

In order for one to understand the evolution of the school desegregation issue better, there is a need to explain the series of national programs that were developed in the area of access to education for Roma children. Starting with the accession process to the European Union, Romania agreed with the EU under several PHARE education programs as part of the so-called access to education for disadvantaged groups, with a special focus on Roma umbrella. Four phases of the program were implemented and one can easily notice their interesting evolution.

The first phase began to be implemented between 2003 and 2004 (PHARE 2001), and its aim was to support the Ministry of Education and Research to implement its strategy of improving access to education for disadvantaged groups, with a focus on Roma.

According to the program’s official documents, the objectives were:

- to increase the availability and to improve the conditions of pre-school education, in order to stimulate early enrollment;
- to stimulate the completion of compulsory education and the prevention of drop-out;
- to provide second-chance education for people who do not complete compulsory education.

Two components of the program were directed towards the development of a capacity for schools to address the needs of disadvantaged communities. Another was a grant scheme for projects in ten counties (out

of 42 counties, the beneficiary being the County School Inspectorates) aimed at ensuring better access to education for disadvantaged children, particularly the Roma, and preventing and reversing dropout trends.

The second phase of the program, implemented between 2004 and 2006, was designed specifically to promote the principle of equal chances to education. Improvement of the conditions of pre-school education, stimulation of early enrollment, prevention of dropping out, stimulation of enrollment in the “Second Chance” programs at primary and secondary levels were among the main objectives which were stated. This was the key moment of the beginning of the desegregation process. Also, the program continued with the development of county strategies, teacher training, and the development of curriculum. Twelve new County School Inspectorates benefited from the grant scheme.⁴⁶

The third phase was implemented starting in 2006, and was addressed to counties which were not targeted in the previous two phases, and continued the investment made so far, but focused more on developing county strategies for inclusive education, asking for concrete actions for school desegregation, strengthening the school mediation, remedial education and curricula revision in order to respond better to the Roma needs, strengthening of the “Second Chance” curriculum.

The final phase (PHARE 2005) focused on analyzing the impact of the earlier program phases, with special attention on inclusive education, the “Second Chance” programs, and the status of the desegregation process. An action plan for the access of disadvantaged groups to education and promotion of inclusive education was also developed. Unfortunately it has not yet been adopted as an official document.

There are mixed perceptions of the impact of the PHARE programs, especially as regards desegregation. The Impact Study that was produced sees as a strength of the program the “the presence for the first time, at the national level, of some aspects linked to the phenomenon of discrimination—through explicit approaches of the phenomenon of segregation.”⁴⁷ However, the Roma NGOs were rather critical of the actual accomplishments of the PHARE Program, as they expected much more concrete results.

In terms of school desegregation, NGOs are requesting the actual implementation of the desegregation ministry order, namely more than “ex-

⁴⁶ For detailed information on the *Access to education for disadvantaged groups* program in Romanian, please visit: <http://www.edu.ro/index.php/articles/c486/>, <http://www.edu.ro/index.php/articles/c746/>, <http://www.edu.ro/index.php/articles/c710/>

⁴⁷ Ulrich, “PHARE programs,” 209.

PLICIT approaches to segregation,” an effective change leading to completion of the desegregation by mixing the student cohorts, a process that is considered already taking too much time. The school mediation is a strength of the program, but the so-called institutionalization cannot be considered a positive practice unless school mediators continue to be part of the system, with resources allocated for their salary and training. The investment made in school infrastructure is important, but desegregation must be accompanied by complementary measures even out the differences between Roma and non-Roma children, the level of training of teachers in Roma areas, attracting parents closer to the educational process.

In regard to the funding of educational programs, the most important contribution was played by pre-accession programs, PHARE especially, with a budgetary allocation of 30.1 million euros (22.67 million euros from the European Union, 7.43 million euros from the Romanian Government), which seems to be a generous allocation over a six years period (actual implementation started in 2003, finished in 2009). There is no clear evidence on the level of spending on desegregation issues, the project budgets being constructed around standard items, according to PHARE procedures. However, as mentioned above, starting in 2004, the desegregation issue was on the agenda of all the investments made, being them in school infrastructure, educational materials, training of teachers, and school mediation.

It is important to mention that according to the new National Education Law adopted in 2011, there are provisions for funding school units based on a standard cost per student and a specific coefficient of the school, which is higher for school units that teach in minority languages.⁴⁸ Until the full application of the new law, the present funding of the education is rather non-transparent. A study by the Romanian Academic Society⁴⁹ highlights three main issues related to funding of the education in Romania: (1) lack of a clear set of standards for reporting on funding from local authorities, making difficult the evaluation of the maintenance expenses; (2) fragmentation on maintenance and salary costs (reallocation between them is not possible) and distribution of responsibility between the Minis-

⁴⁸ National Education Law, Article 101 (2) “Funding is established according to the standard cost per student according to the methodology elaborated by the Ministry,” and Article 104 (3) “The main funding of a school unit is the result of multiplication of the standard cost per student with the specific coefficient of the school and the number of students.”

⁴⁹ Societatea Academica Romana, *Lights and Shadows in the Romanian Schools*, 2–3.

try of Education and local authorities; (3) a lack of control and influence of the Ministry of Education on actual use of funds. The lack of transparency on budget allocation per educational unit might explain the underdeveloped infrastructure, as well as the poor endowment of those schools attended predominantly by Roma. Infrastructure, endowment, and teacher qualifications are important indicators of the quality of education.

The importance of other donors active in the field should be noted, especially UNICEF Romania, which supported governmental initiatives along with NGO initiatives in education, the Open Society Institute's Roma Participation Program, which provided support to Roma NGOs to advocate for desegregation, and the Roma Education Fund, which started fundraising and implementing a large number of programs including, more recently, programs funded through structural funds (school after school, educational support and scholarships).⁵⁰ Without the support of these organizations segregation would have been an invisible issue within the Romanian educational system.

Roma NGOs were a significant factor in advocating for desegregation. Organizations like Romani CRISS, Amare Rromentza, Șanse Egale Zalău, the Roma Women Association Timișoara, Ruhama Foundation Oradea etc. are currently implementing school desegregation projects funded by REF and EU through structural funds. There is too short a time to assess the results of these projects. While it is a positive development that Roma NGOs are moving towards implementation of desegregation policies, there are also voices expressing worries about the monitoring capacities of Roma organizations regarding the progress achieved by the government.

During the process of articulating Ministry Notification (no. 29323/20.04.2004) on school segregation and Ministry Order No. 1540 on the interdiction of school segregation, several consultations took place with relevant NGOs active in the field of human rights, anti-discrimination, and education. The result is a compromise, and the civil society actors continued to look for improvements of the Order. For example, Romani CRISS is recommending setting-up a so-called Central Desegregation Unit within the Ministry of Education in order to offer technical assistance to schools in implementation of the Order, to monitor the segregation situations and to sanction the segregation cases.⁵¹ Also, they rec-

⁵⁰ For a detailed list of projects implemented by the Roma Education Fund Romania, see http://www.romaeducationfund.ro/indexf858.html?page=menu&id_rubrica_menu=21

⁵¹ Surdu, L., "Monitorizarea aplicării măsurilor împotriva segregării școlare în România," 35.

commend the completion of Ministry Order No. 1540 with administrative and financial penalties for not putting into practice its measures.

The Decade watch Romanian Report 2010 also recommends the completion of desegregation.⁵² The provisions of the Orders should include increasing in the Law of National Education “the juridical force and the visibility of the principle of desegregation.” The Roma Education Fund has found “a lack of adequate desegregation policies and enforcement measures” and that “there is an extensive number of Roma children placed in special education.”⁵³ Unfortunately, the policy makers failed to include the anti-segregation provisions within the law.

An important problem is the lack of systematic collection of data on segregated schools and classes, in order to identify all the cases, the reasons behind them, and to set action plans for resolution, including here all the relevant actors (parents of Roma and non-Roma children, teachers, local community, children).⁵⁴

The ministry’s “Action Plan for Ensuring the Access to Education for Disadvantaged Groups and Promotion of Inclusive Education,” presented in 2009 at the close of the PHARE Access to Education programs set several priority domains, including desegregation. Even if the Action Plan was never adopted or signed by the Ministry, it can be a useful tool for the relevant actors, establishing specific measures, such as,

- the dissemination of information, including organization of debates at county level;
- the elaboration of a guide for analysis and intervention in case of segregation;
- campaigns for the prevention of discrimination and promotion of inclusive education;
- inclusion of diversity/anti-discrimination concepts in the basic school curriculum;
- updating School Charters with the provisions of the desegregation Order;

⁵² Decade Watch, “Romania Report,” 34.

⁵³ Roma Education Fund, Position paper of the Roma Education Fund for the High Level Meeting on Roma and Travellers organized by the Council of Europe in close association with the European Union, Strasbourg, October 20, 2010, p. 22, available at: <http://www.romaeducationfund.hu/publications/policy-documents>

⁵⁴ Duminica, “A School for All?” 162.

- elaboration, implementation and monitoring of desegregation plans at national, county and local level;
- involvement of the local community in the desegregation process.

At present, there are no incentives for desegregation measures, but the new adopted National Education Law, will establish the funding of the school units based on standard cost per student.⁵⁵ Such an approach will support the interest of the schools in reducing drop-outs and promote school participation among Roma. Transparency in the allocation of funds together with other provisions of the law, such as “school after school” measures,⁵⁶ will contribute to a better quality of education in schools with significant Roma students by ensuring better equity in education. However, this will not solve the issue of mixing the students cohorts, and the government will have to employ other measures to advance desegregation.

Difficulties and gaps in the desegregation process are to be expected. Perhaps the most important obstacle is the resistance to change. Desegregation has to be done in a gradual way. On the one hand, its advantages must be understood by the Roma community itself, and on the other hand, they must be accepted by the rest of the community, including school staff, non-Roma parents, and so on.⁵⁷ Negative stereotypes and prejudices against Roma will be an important factor that will negatively affect the desegregation process, especially during the current economic crisis, which has increased the poverty of an already poor population. The benefits of desegregation are, on the long term, improved outcomes for employment of Roma, improved capacity to enter/re-enter the labor market, and, in the end, breaking the centuries-long vicious cycle of poverty. Having in mind the actual challenges of the demographic transition, the Roma, with their higher birth rate, should be seen as a huge opportunity to invest in society’s sustainable development rather than a cost, a burden to the social benefits budget.

There is still hope on the long run—the country’s capacity to democratically progress, to internalize social inclusion values, to improve economically in the context of European Union membership, will influence in a positive way the desegregation process. School desegregation and access

⁵⁵ National Education Law, Art. 104 (3), (4).

⁵⁶ National Education Law, Art. 58, School after School Program.

⁵⁷ Interview with Liliana Preoteasa, General Director, General Directorate Education and Long Life Learning, May 21, 2009 in Bucharest.

to quality education for Roma is a prerequisite, but will not bring about change unless accompanied by multi-sectoral approaches, including employment, health and housing.

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Interview with Klára Orgovánová from Slovakia

Klára Orgovánová was the Government Plenipotentiary for Roma Affairs between 2001 and 2007, in which capacity she coordinated the policies towards Roma of the Slovak Government. She was program director for the Open Society Foundation in Slovakia, director of the Foundation for Romani Children, and director of the InfoRoma Foundation.

The interviewers were Iulius Rostas, Mihai Surdu and Marius Taba.

Question: Looking at your career, you have been involved in quite a number of things.

Klára Orgovánová: Yes, it is true. But first of all, I would like to tell you that I am not an expert in education—I am a clinical psychologist. I started to become involved in Roma-related issues in 1989, and for the past approximately twenty years I have been in different positions. I started my work in a non-governmental organization, and in 1991, we established the first Romani NGO in Slovakia. It was the Foundation for Romani Children, and I was its executive director. From 1992, I worked for the Soros Foundation in Slovakia, where I was the program director of Roma programs, and in 1995 I set up the InfoRoma foundation. After that, in 2001, I moved to a government office as a Government Plenipotentiary for Roma communities where I worked for six years, and now, for three years, I have been working in a special NGO sector. This means that, in my career so far, I have worked more like a manager than an educational specialist.

Q: Moving to the issue of Roma and education in the communist period, how would you describe Roma education in that period? What were the positive and the negative aspects of Roma education?

K.O.: In the period prior to 1989 Roma assimilation was the state's official policy, but after the fall of the Communist regime, Roma were acknowledged as one of the national minorities in Slovakia. Before 1989,

most Romani parents were employed, but many children still received free meals or clothes, especially those in kindergartens. Even at that time there were Romani (Gypsy) classes or schools, especially the special schools. But there was stronger pressure on Romani children to go on to secondary schools and at least finish the apprentice schools (vocational schools), which lasted for two or three years and graduated without a graduation examination.

I was also educated in that educational system, but I think that I never had any problems at school. Usually I was a good student. Still, I had certain emotional experiences. At that time, especially in elementary schools, certain institutions collected information about Roma students and I did not understand that. One day when I was in the classroom a person asked me to come out. There were some people there who asked me basic questions about me, my father, my mother, and I did not know why. At home I asked my mother, and she said that they were collecting data about Roma. In many Roma student records, after their name, there was a letter “C,” for “Cygan.”

Q: Was there a type of policy targeting Roma, or focused on Roma?

K.O.: I do not think there was some type of policy targeting Roma affecting me, also I lived in the city, not in a ghetto, and I have to say, what opened my eyes after the change of the political regime in 1989 was when I for the first time saw a Romani ghetto. That sight was very different from where I grew up, where there was a good co-existence of Roma and non-Roma.

The official state policy was assimilation of Roma and in that time, there were the special Romani classes or schools, or some quotas existed, for example for university study. My experience with the educational system is more from post-communism. My sister is a teacher, we established the Foundation for Romani Children. What we did, among other things was providing scholarships for a lot of Romani students to secondary schools and universities, and we established four “educational centers” for children in pre-school age.

Q: Did you have Romani peers at school?

K.O.: Never. Always during my studies I was the only Roma. In first grade, there was one Romani boy at the beginning, but he disappeared to I do not know where. Then I was the only Roma at the secondary school, and later at the university. I was alone.

Q: As you mentioned, there were ghettos during communism as well.

K.O.: Of course, there were ghettos. Still, I think back then Romani children were less segregated than today. There were more opportunities for Romani children to be together with others than there have been in the last 20 years.

Q: Were there other successful Roma at that time who studied at universities?

K.O.: Not at the university I went to, although there were different departments: I studied psychology, and my cousin was at the department of law. But I know other Roma as well who were studying at universities. They were from other cities, from Romani settlements, many times poor people and still they were successful in universities. After graduating from the universities, they had no trouble finding jobs.

Q: What do you think is the extent of the difference in segregation now compared to the period before 1989?

K.O.: The discussion about segregation or desegregation is rather weak and vague, and I think that not so many people understand what it really means. I think that neither many Roma nor Romani organizations have a clear vision of it. Officially, people working in education declare that they would like to desegregate the educational system and to launch programs focused on integration. But on the other hand, after 1989, new secondary schools were established aimed at supporting the education of Roma. There is also a university specially for Romani students—though it is necessary to say that many non-Roma are studying there as well.

During the last few years, several changes took place in Slovakia with positive implications for the education of Roma children and the elimination of discrimination in the education system. In 2008, an important amendment of the Anti-discrimination Act reintroduced the possibility of the adoption and implementation of positive measures. It was a procedure which brought many positive outcomes even though I do not think it decreased segregation.

Also, right now, there are many classes or whole schools with exclusively Romani children. Unfortunately, those Roma who are socially disadvantaged, unemployed, etc. began to become geographically segregated. More isolated. It is one of the reasons why we have more segregated schools and classrooms in one building, because of a higher concentration of Roma in one locality. Roma do not live mixed with the majority population.

Q: Is the notorious neighborhood in Košice named Lunik IX a special case, or does it indicate the trend on how it became a ghetto?

K.O.: In Slovakia, we can find other localities like Lunik IX. Lunik IX is a good example for journalists because it has a very high concentration

of Roma, but we have the same situation in Rimavská Sobota, or in Prešov. Roma used to live in other parts of Prešov. The local government wanted to give Roma new houses, but they concentrated there almost 2,000 Roma from all of Prešov, and they created a ghetto.

Q: Did they build a school there?

K.O.: Nothing, no infrastructure was developed there.

Q: How was the education for the children solved?

K.O.: There is one kindergarten, established by NGOs, one building but with two wings: one is for Roma, and the other is for non-Roma. We discussed this problem with the director of the kindergarten: we wanted to create coeducated groups. At that time I was the Plenipotentiary. I went there several times, and it was simply not possible. There are certain opportunities to mix the children during lunch or on the playground, but they have separate classrooms.

Q: Does the political and educational system now, in the post-communist period, address the issue of Roma identity?

K.O.: After 1989, the political system in the region changed and Slovakia wanted to become part of Europe. International organizations and institutions urged us to accept all the international charters and human rights treaties. Owing to all these circumstances in the former Czechoslovakia the Roma were recognized as a national minority, and the first document produced by the new government which declared that Roma are national minority in Slovakia and not a disadvantaged group was adopted in 1991. Also, in the 1991 census, it was for the first time possible for us to declare that we are Roma. It was a significant step because we started to create something that is called a national minority. Many Roma did not want, many Roma were afraid: "No, we live here, we are Slovaks and we don't want to be more visible." I remember when several people, who were older than me, warned, "Be careful. It's not so easy, I still remember those other times, and it's not a good idea to be so visible." The younger generation and especially non-Roma helped us set up organizations; we started to publish our first newspaper and also to do something in the field of education and minority education. Then, I think, it was not really successful. For instance, although we published some Roma language textbooks, we did not have enough books, and also it would have been important to do something with the language, just as to train teachers suitable for this task. During my time in the Office of the Plenipotentiary, we awarded certificates to 35 people who were trained to teach the Romani language. We established some schools not for Romani children, but for Roma studies and so on, but I do not think it was massive and led to a

positive impact. We had a lot of positive initiatives, but I think the outcomes were not in proportion to the invested efforts.

Q: How did the break-up of Czechoslovakia affect Roma and their access to education? We know that, for example, in the Czech Republic the sentiment was “Roma are Slovaks, so they should go back.” What was the situation? Did they go back?

K.O.: Most of the Roma who currently live in the Czech Republic are originally from Slovakia, and I think that each Romani family in the Czech Republic has family members in both countries. For instance, many of my cousins live there.

There was a serious problem with citizenship after the break-up of Czechoslovakia, but luckily there were human rights organizations that helped the Roma to keep both the Czech and the Slovak citizenship. By now I believe it has already been solved. I am not aware of any significant influence on policies, in particular educational policies, following the break-up of Czechoslovakia.

Interestingly, however, there was occasional comparison of the situation in the two countries, like a competition on who does more for Roma. The Czechs would say: “Slovakia is more advanced as they already have initiatives for Roma, which we don’t have.” The Slovak educational system started, as it were, to respect the Romani minority, and introduced the possibility of teaching in the mother tongue. But it was much better used by other minorities, for example, the Hungarians—they built a network of schools where members of the minority could learn in their language.

Q: You touched on an important point, because in some parts of Slovakia there have been cases where Roma identified themselves as Hungarians. And I know from our work in Slovakia that, usually, in the so-called Roma schools, Romani children are taught in Hungarian.

K.O.: That is the case indeed. Many Roma, especially in southern Slovakia, declare Hungarian to be their first language. It is their choice. Usually being able to speak both Romanes and Hungarian, their mother tongue is still Hungarian, and many children from this part of Slovakia attend schools where Hungarian is the language of instruction. I do not see any problem with this. Maybe it is more a political issue with some anti-Hungarian politicians—they are using this as an example.

I have positive personal experience with teachers from these types of schools, and they are more open to Romani children than in typical Romani ghetto schools. Usually, the situation is better in mixed areas where Slovaks, Hungarians and Roma live together.

Finally, I can say that those Romani children who live in the parts of Slovakia with a considerable Hungarian minority are more often successful in schools because the atmosphere and the quality of education is better there.

Q: You said that in the communist period segregation was not so visible. When was, for the first time, the issue of segregation of Romani children in schools discussed in Slovakia publicly? When and how was the term segregation introduced?

K.O.: This happened in the years after 1989. The understanding of the issue then was not as clear and powerful as it is today. The government was eager to adopt European standards, and it was not so nationalistic. In their rhetoric, they would say, “we have a Romani minority that was discriminated for many years, and we have to give them a chance.” Several representatives of the middle-class Roma, the educated people, however, said that they did not want to be so visible. But not everybody preferred to remain passive.

Some non-Roma helped us and encouraged us to lead the way. I remember when I started to teach at Nitra University, in the Department of Roma Culture, it was my first step in getting involved in the Roma issue. This became a movement with the goal to establish a Romani representation through developing a Romani intelligentsia. After the break-up of Czechoslovakia in 1993, segregation became a real issue. The Slovak authorities started to use hate speech and the whole environment was saturated with nationalistic views. In this environment, other minorities, especially ethnic Hungarians, wanted to be more visible, more organized, to have more power in their hands, and it was a challenge for the Roma as well.

The question then was whether this movement would be used in the right way. We wanted to be very active but we were not prepared—hundreds of organizations were established, and I myself started to work in different places at the same time, with many other people. We achieved strong political representation, and it was very important. In each field, especially in the field of housing and education, experts were involved to become professional. In Košice, several teachers, both Romani and non-Romani teachers, established an initiative called “Klub učiteľov rómskych detí” (A club of teachers of Romani children). This team of teachers produced a lot of good materials and papers about education. In Prešov, a methodological and pedagogical center for Romani children was established which focused on collecting data on education. It still exists. I think it was a very important period.

Q: Did this club of teachers discuss the issue of segregation of Romani and non-Romani children?

K.O.: They spoke a lot about special schools, which means about segregation, about labeling Romani children in terms of whether they should attend mainstream schools or special schools. They started a movement as a result of which “zero classes” were introduced. Their idea was that Romani children needed an additional, preparatory year. I am very happy that several Romani teachers also began to be active in this field. Later, in 2005 the Ministry of Education set up an advisory committee specifically for Roma education, but it no longer exists.

Q: In August 1997, the European Commission released an important document called Agenda 2000 which urged candidate countries, or potential candidate countries—especially Romania and Slovakia—to settle issues related to local minorities and adopt a national strategy, or a government program for Roma. How was the situation in Slovakia?

K.O.: Agenda 2000, as well as the Millennium Development Goals, were usually mentioned in each document that was prepared by the Ministry of Education or the government. Still, people started to better understand the significance of various international documents, and the meaning of such pressure.

In 2001, the government approved a key document: the National Program of Education and Instruction in the Slovak Republic, which was to cover the next fifteen to twenty years. It outlines a vision of reform for the Slovak education system that includes fundamental changes that, in the opinion of experts, would be beneficial for Roma children with special needs. There are quite good ideas, for example, Verification of Effectiveness of the Curriculum for Roma Language and Literature in Primary and Secondary Schools.

Another very positive step was on Methodology Instruction issued in December 2003 by the Ministry of Education. It introduced the position of teacher’s assistants to help in preschools, primary schools, and special primary schools.

Q: Did these documents address the issue of special schools, and the circumstance that Romani children were placed mostly in special schools?

K.O.: In many documents, the need for development in the education field has been widely recognized and one of the most negative phenomena is the segregation of Roma children in schools. Despite this fact, the new School Act approved in 2008 does not tackle segregation and

enables the continued creation of various forms of segregated education for Roma.

Unfortunately, it did not bring any measures to reduce the high number of Roma children placed in special schools, or to eliminate segregation in after-school activities. It needs to be said that one of the positive outcomes of the project “Reintegration of socially disadvantaged children from special elementary schools into standard elementary schools,” supported by PHARE 2001, was the procedures adopted in diagnostics of Roma children that promoted the use of a school readiness tests and screening to exclude mental retardation.

Despite similar activities in the field of education, the education system failed to change over the last ten years, and legislation has not been amended to ensure equal access of Roma children to high-quality education.

Q: It was the same everywhere in the region, in that governments were trying to respond to the Commission’s pressure. When special schools were identified as a problem and that Roma are sent primarily to these schools, how was this issue put on the public agenda?

K.O.: Eastern Slovakia has a high concentration of impoverished people, and you will find a high concentration of special schools there as well. A very high percentage of Romani children attend special schools there, but even within it, in some areas or localities the authorities are more efficient in finding ways to solve the problem. In other areas, the authorities have been unable to solve it. In some settlements the authorities do not have the conditions to change the situation. I personally know of one settlement in Slovakia where the local authority has few buildings for educational purposes, and in these buildings there are only special schools. All Romani children attend this school, and they do not have the chance to attend a mainstream school. All non-Romani children go to a school in the nearby village. This is how this settlement solved this issue: it said that all Romani children will attend special schools and they did not establish a normal school. They do not have an issue with non-Roma because their children attend a school in a neighboring settlement. The mayor of the settlement and the headmaster of the school say that the Romani children receive a better care in this special school, thus it is better for them.

Q: Did parents accept this situation?

K.O.: Many parents do not recognize this as a problem. They simply do not understand what it means, where it leads. Instead, incentives motivate parents to send their children to such schools. What is most important

is that special schools are placed mostly next to the Romani settlements, which is an administrative decision. The result is that only special schools are accessible to Roma. The sad thing is that the authorities honestly believe it is better for the Romani children to attend these schools.

Q: The practice of testing children before enrollment in school has been very much criticized. It has been demonstrated that the tests, among others, were not culturally sensitive. What was the reaction of professionals, teachers and the government to this?

K.O.: The Slovak authorities implemented a PHARE project to develop psychological tests for Romani children. Importantly, these new psychological tests recognize cultural differences. For example, previously these tests were non-verbal, using pictures, because pictures are said to be more suitable for non-Romani than Romani children. Also, it was important to rethink the instructions given during these tests, and the way these instructions are given. Psychologists and teachers participated in the elaboration of these tests. However, the results showed that the differences in the outcome between the old and the new tests are not that large.

Q: But the practice of testing is still in place today?

K.O.: Yes, it is still used by the Pedagogic-Psychological Consulting Centers.

Q: We know that this club and various organizations, both Romani and non-Romani, are pushing for desegregation. On the one hand, there are special schools, and now we have this transitional way to the mainstream school which is sometimes effective, sometimes not. How do you see these interim stages for Roma?

K.O.: It is very difficult to work with disadvantaged children and with their parents. In the past two decades, I have worked in the NGO sector and we have implemented a lot of good projects, spent a lot of energy, especially with these types of families.

A number of education programs of various scopes have been implemented in Slovakia, and numerous pilot projects have been launched, particularly in kindergartens. The programs of the Wide Open School Foundation helped lead to the acceptance of alternative forms of education for Roma children.

Among other projects, we established an educational center for children of preschool age. Romani children from the ghetto need a sensitive and special approach. We spoke with their parents, we explained what it means for their children if they go to kindergarten, and if they attend this or that school. We organized meetings in the mayor's office. While, on the one hand, the mayor and other staff members of the municipality

who came felt embarrassed to sit next to Romani women from the ghetto, for the Romani women it was unusual and pleasing that somebody prepared coffee for them and spoke to them about issues relevant to them. After this discussion, on the first day twenty children showed up at the mainstream school. One week later, when Roma started to realize that it is good for their children, we had a lot of children who wanted to attend this school.

It is important to have an individual approach. The state seems to be unable to build a practical bridge to transfer children from special schools to mainstream schools. Maybe NGOs can play this important role. There is this element based on individual approach which the current administrative system lacks. There are important nuances such as language, different behavior patterns which may make Romani children look different, or at the first glance, God forbid, unsuitable for the mainstream school. Still, this does not mean that they are mentally disabled. They definitely need assistance, which they normally receive from non-governmental organizations. Our foundation, jointly with the Wide Open School, carried out a four-year experiment, "Reintegration of socially disadvantaged children from special elementary schools into standard elementary schools" in which Romani children from special schools were integrated into mainstream schools. It was based on official methodology, and the Ministry of Education is in possession of the results, but they do not seem to be interested in applying the method on a wide scale.

Q: What happened with this experiment?

K.O.: One of the positive outcomes of this project was to adopt procedures in diagnosing Roma children that promoted the use of a school readiness tests and of screening to exclude mental retardation. The tests was designed for the re-diagnosis of children which are already enrolled into the special elementary schools. The success of the project is questionable. One of the reason is that the tests apparently cannot be used to assess individual learning needs, but only to establish that children lack mental disability of a degree sufficient to justify placement in special schools or classes. Some psychologists justify the tests are so long that a child gets impatient, some of them do not see the difference from the standard tests in how they are used. The model was how to integrate into mainstream schools those children that were misplaced in special schools. The system lacks flexibility, but also a strong political will is missing to incorporate these changes into the system.

Q: How did political parties react to the problem of segregation of Romani children in special schools?

K.O.: Some political parties made statements with respect to the situation of Roma, especially before elections. In the last elections, each political party had a vast Roma program. One political party officially declared that they want to have a Roma agenda, another political party stated that they wanted to solve the Roma issue. Usually, there is a Roma group who are close to the given political party, and they provide them with ideas, and the politicians start to spread them.

As a rule, they create documents in which they emphasize, among other things, the importance of human rights, and so on but, as I said, they do not know what it means. For many of them, for example, integration does not mean what it actually means; they remain vague instead of defining the issue. Probably all vice prime ministers in Czechoslovakia and Slovakia who were responsible for human rights and minority issues visited eastern Slovakia, and when they saw the Romani ghettos they said, “We have to do something.” And months later, this idea of doing something somehow disappeared.

Q: There have been different positions in the administrations that were occupied by Roma. Did any of these people push the issue of segregation?

K.O.: They put the issue on the agenda, but they did not implement it. They had papers and strategies, and they could talk about it. We had eighteen Roma political parties but they disappeared with the new law that required the re-registration of political parties.

In the early 1990s, there were around 230 Romani NGOs in Czechoslovakia which focused on Roma-related issues. Many of those had political ambitions. There were several Roma groups which had political ambitions, but the majority of those turned out to be unable to adopt the classic behavior necessary to survive in politics. In fact, many of them misused conferences, presentations and opportunities. Later, 2004 was a very important year for us when in January and February the notorious Social Reform was on the agenda. Roma organized national protests, and it was very hard time for Slovakia. The scale of the protests was largest in eastern Slovakia, and it was mainly Roma who were protesting. The prime minister sent in 1,500 police officers.

Q: Back to the issue of segregation, what are the arguments for maintaining school segregation, if any?

K.O.: Desegregation means mixing Romani children with non-Romani ones, so that later in life they have better chances of peacefully living next to each other. For Romani children studying in integrated classes inevitably means that they will more frequently use the Slovak language instead of their native Romanes.

The question is whether it is indeed possible to desegregate a village that has a non-Romani neighborhood and a Romani neighborhood. As it were, the situation is geographically determined. When teachers and mayors want to do something about it, they have limitations of a practical nature. Additionally, Romani parents, understandably, choose not to send their children to the non-Romani part of the settlement, but prefer to stay in the ghetto. In a typical Roma ghetto, Romani women frequently prefer to stay separated, it is easier for them. In many localities, regrettably, this is the case. Often, in order to receive financial support to change the situation, an important condition is that schoolchildren must be integrated, but in many cases this is not possible. In some settlements where there are very strong tensions between Roma and non-Roma, it is better to be separated.

Q: If you do not go to the same school with non-Romani children, you are not likely to have many non-Romani friends, you will live an isolated life with all that implies. Are Roma prepared for these consequences?

K.O.: We, Roma, have not used all the opportunities we have had. We have done a lot of work in the field collecting data, we have published numerous reports, but I prefer things that are more practical. The crucial question is if we understand what desegregation involves. It may be better in some places to have Romani children in one classroom, but to ensure a very high level of education. I have been in the United States, and I saw there a lot of schools only with African-American children. It depends on local conditions.

Q: You spoke about the Wide Open School as an example. Do you see any chance that the minister of education in Slovakia will somehow take this as an example for a policy towards Roma?

K.O.: Yes, I do. There is a new government in place. I plan to meet with the minister of education, and also the Open Society Foundation has elaborated various educational projects. I very much hope that it can work in this way that we will provide policy makers with the relevant materials and findings, and urge the decision makers to use them. That is the task—to educate these people in the new government.

Q: How were the results of these experiments presented to the public?

K.O.: It was a few years ago. I do not think that it was publicized extensively. On a few occasions, it was presented at seminars and conferences, and also there were a couple of meetings with government officials. At that time I was Plenipotentiary, and I worked a lot with the minister of education. The experiment was not finished yet, and we were waiting for the results.

Q: Segregation does not simply mean low quality education, it in fact prevents the children from completing more than eight grades. The system does not allow continued education. This system is maintained even though running special schools is more expensive than maintaining regular schools. As far as I know, the per capita financing in special schools is 2.5–3 times more expensive because children receive food, clothes, etc. To what extent do you think this system needs to be changed?

K.O.: Generally, integrated education is the better solution. It is better to be equal with others, to enjoy the same rights, to read Romani newspapers, and to have Romani theaters and so on. But the reality is that the situation is different. In the past 20 years we have been trying to find solutions. The Romani agenda in Slovakia since the year 1989 began more visible in certain periods and became a part of the public discussion. But, so far, after 20 years of emphasizing this priority, we have not been able to solve the problem of special schools yet.

Q: In the Ostrava case, in 2006 and then in 2007, the European Court of Human Rights ruled that putting children in special schools is discrimination under the European Convention. What was the reaction, if any, of the Slovak authorities to this decision? The system in Slovakia is quite similar to that in the Czech Republic.

K.O.: Officially, in Slovakia, it was not much in the news. I do not know if the Ministry of Education commented on it, but it was definitely brought up by NGOs. There was not much reaction from the governmental side. I know that after the publication of the Roma Education Fund report, the vice prime minister denied that Slovakia segregates Romani children. He also stated that the data in that report did not reflect the reality.

Q: What do you think will happen in the next three to five years with respect to the overrepresentation of Roma in special schools?

K.O.: In its program, the new government has declared many promising things for the Roma. There is this new political approach held by one of the coalition members that politicians should speak about socially excluded communities instead of specifying Roma as a group. The state secretary of the Ministry of Social Affairs is currently preparing a law about socially excluded communities. So the new philosophy is not to speak about Roma. The state secretary says that it will be better for the Roma because they will be less identified with ghettos.

Q: Appointing a non-Romani official to the position of the Plenipotentiary looks like the same thing as in Czech Republic.

K.O.: Yes. I understand there were problems with the Plenipotentiary in the past three to four years. They were not able to do much. I have on several occasions met with the new Plenipotentiary and we have worked together on a couple of issues. Now we have these new cases of segregating walls. However, the reaction from his office was very weak. Officially, they declare they will examine the situation, but I am afraid only few things will be implemented. The main agenda for this office is the use of Structural Funds.

Q: In Hungary, it is the local authorities that have to apply for EU funds, and many mayors refuse to apply for this money because then they have to do something for Roma. Is the situation the same in Slovakia?

K.O.: As a Commissioner Plenipotentiary for Roma Issues, I made the most of the Structural Funds for Roma, which was praised by Mr. Soros. As an office, we prepared this comprehensive approach adopted by the government, by Brussels, and by different ministries. This was a horizontal priority, meaning that settlements had the opportunity to request EU funds for operational programs, and the first condition for this was to prepare a local strategy. This was meant to be a plan for how these mayors would solve the given issue in three, four, or five years. There was a call for proposals issued by the office of the Plenipotentiary, and the office received 257 local strategies and evaluations to support 150 local strategies.

In February or March, the office approved 150 local strategies. This means that mayors expressed their project intent or project ideas for different developments in the area of infrastructure, education, housing, etc. And now the different operational programs will announce calls for these different project ideas. It is very difficult to implement this comprehensive approach, but, what will happen is that some localities, including ghettos, will have better infrastructure. The end result, I hope, will be better conditions for better education.

Finally, it would be very important for the new government to continue the new policies, just as it would be important to have strategies for 20 years, not for four years or ten years, and to follow the set agenda.

School Desegregation Policies in Slovakia

MIROSLAVA HAPALOVÁ AND MARTINA KUBÁNOVÁ

Educational segregation of Roma children in Slovakia has been repeatedly noted by studies and analyses from non-governmental organizations and research institutions.¹ The prohibition against discrimination and segregation in education by the School Act from 2008 was the result of continuous pressure from international bodies² over the last 20 years, which consistently urged the Slovak Republic to eliminate persistent discrimination and segregation, as well as from joint activities of national and international NGOs.³ Although the explicit prohibition of segregation is undoubtedly a very important step, an isolated legal act is not sufficient. Even three years after its approval, neither legislative nor expert definitions of segregation exist. Furthermore, there are no established indicators and criteria for its evaluation, and no strategies for its prevention and elimination.⁴

¹ For example Rafael, *Answers to Question on (de)Segregation of Roma Students in Slovak Education System*. Amnesty International, *Steps to end segregation*; Friedman, *School as Ghetto*, Metodicko-pedagogické centrum Bratislava – alokované pracovisko Prešov, *Správa o výsledkoch prieskumu*. Hapalová, *Equal Access to Quality Education for Roma*.

² Among others: United Nations Commission on Human Rights, European Commission against Racism and Intolerance; UN Committee on the Elimination of Racial Discrimination.

³ Open letter to the Deputy Prime Minister and Minister of Education to the prepared School Act. The letter was signed by a coalition of eight NGO's and includes suggestion to amend the School Act by the prohibition of discrimination, especially segregation. Available at: <http://www.clovekvtisni.sk/index.php?clanok=92>

⁴ A more detailed description of segregation in Slovakia is available only in relation to housing. The government's housing strategy for marginalized groups quotes the term spatial segregation as spatial separation of Roma and non-Roma settlements by a physical distance or by natural or artificial barrier (river, rail, road, etc.). Available at: www.build.gov.sk/mvrrsr/source/comment/002317_04.doc

Since the absence of a definition of segregation constitutes one of the main obstacles to its elimination, several non-governmental organizations and other institutions are trying to fill the gap. The Slovak anti-discrimination body, the Slovak National Center for Human Rights, refers in its publications to the International Convention on the Elimination of All Forms of Racial Discrimination. In correspondence with the Convention, segregation is understood as a form of “exclusion or separation of certain groups on ethnic, racial, social, gender, religious or other principles. It may take the form of residential segregation, creation of segregated institutions or parts of institutions—e.g., schools and classes; ward blocks or facilities.”⁵ As one of the results of the working group of experts from non-governmental and academic sectors on segregation in education operating for two years and coordinated by the Open Society Foundation, a more elaborated definition has been formulated, which identifies the segregation of Roma children in education as “a phenomenon that, in combination with their ethnicity (and often social disadvantage), leads to their spatial, organizational, physical and symbolic discrimination or separation from other children. This in turn leads to practically considerably lower quality of education resulting in insufficient personal development, social inclusion and integration. It results in the education that is not in the best interest of this target group of children.”⁶

Additional definitions focus on features of segregation, distinguishing it from other forms of differentiated education (like minority education), and pointing out the lower quality of education in both the process and results of education (in terms of acquired skills and achieved levels of education), and low degree of optionality in the process of separated education.⁷

Specifically, the following types of segregation can be identified in relation to Roma students: separate education in the special education system in special classes of mainstream primary schools, or in special schools and separate education in the system of standard mainstream schools as standard primary schools with a majority of Roma students or Roma-only schools or Roma-only classes in standard primary schools, in many cases located in separate buildings or pavilions.

⁵ Slovak National Center for Human Rights, *Report on human rights*, 125.

⁶ Paulíniová, “Description of Segregation in the Slovak Education System.”

⁷ Hapalová, “Education System Management.”

Governmental Policies Aimed at the Education of Roma Children

The term “segregation” is not very frequently used in education-related governmental and ministerial documents. There is no explicit desegregation policy in education, and from the mixture of education-related measures in place, those that have potential to prevent or eliminate segregation do not prevail over those that maintain or worsen the status quo. We will briefly review the government manifestos and main strategic documents in education and their approaches to the issue of segregation.

Government manifestos provide an interesting overview of priorities set by new governments, with top priorities following the usual political cycle of government manifesto—strategy, legislation, and implementation during the four-year governmental period. However, the strategic documents related to education of Roma children sometimes emerge with a time lag to a main education strategy that does not deal in detail with this issue, or emerges later due to a longer process of their preparation by different working groups.

Government manifestos

The current Government Manifesto of Iveta Radičová’s government is the first one that explicitly uses the term “segregation at schools.”⁸ First, in Section 3.2 “Labour, Social Issues and Family,” under the heading “Roma settlements and marginalized communities,” it names several measures that will be supported. It reads, “the Slovak Government will take measures against segregation at schools and misplacement of children from socially excluded societies to special schools and will introduce pre-enrollment tests in the Romani language.”

Then, in Section 3.4 “Education, Science, Youth and Sport,” under the heading “Primary and secondary education,” the manifesto states that “the Slovak Government will reassess the importance of special schools and will adopt measures to eliminate segregation based on ethnicity (including introduction of pre-enrollment test in Romani language) and will support

⁸ Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2010–2014, “Občianska zodpovednosť a spolupráca [The Government of the Slovak Republic Manifesto for the period 2010–2014 “Citizens’ responsibility and co-operation”] approved by the Parliament of the Slovak Republic on August 4, 2010. Available at <http://www.vlada.gov.sk/data/files/6257.pdf>

maximum possible integration of children with special needs and improvement of conditions for those children where integration is not proper or possible.”

The earlier Government Manifestos are less detailed with regards to Roma. The 2006 Government Manifesto for the former government led by Robert Fico mentions the Roma community with regard to tackling their socio-economic problems and support to their employment.⁹ But the terminology is rather vague¹⁰ and measures to be taken with regard to Roma are often less detailed. This is particularly true with respect to education of Roma children, where the only educational Roma-related measure is linked to preschool education.

The 2002 Government Manifesto of the Mikuláš Dzurinda's second government states with regard to Roma issues that “the Government will continue useful projects in education, culture, housing, infrastructure and social issues,”¹¹ but in education, its focus was on large-scale reforms of decentralization per-student formula financing, rather than education of Roma children.¹² However, even this was a step forward compared to the 1998 Government Manifesto that only stated that, “it is the Government's intention to allocate funds for a long-term educational program for Roma children and for supporting the employability of Roma and to make the Roma community involved in improving the quality of their life.”

⁹ Programové vyhlásenie vlády Slovenskej republiky [The Government of the Slovak Republic Manifesto] approved by the National Council of the Slovak Republic in August 2006. 27–28: In the section *Social Inclusion Support* it states the support will be given to non-financial measures (e.g. social services, social guardianship, community development) with “the aim to eliminate poverty and social exclusion of people including marginalized Roma communities.”

¹⁰ “Special attention will be devoted to support of marginalized Roma communities,” (Ibid., 23), or “in regional development, the socio-economic problems of Roma community will be more dealt with, emphasizing the complex character of measures to be taken covering a broader area inhabited by these communities” (22), or “The Government will create conditions for a real integration and inclusion of the ethnic Roma with the aim to increase their living standard, based on the broadest consensus on the one hand and the political will on the other” (44).

¹¹ Programové vyhlásenie vlády Slovenskej republiky [The Government of the Slovak Republic Manifesto] approved by the National Council of the Slovak Republic in November 2002, 5.

¹² Ibid., 29: “The Government will support the preschool education of children as a service for families while giving priority to using preschool education as a means of integration of Roma and other disadvantaged groups in education,” and “the Government will create conditions for education in mother tongue also for Ruthenian and Roma minorities while improving the quality of instruction on the state language.”

Strategies and concepts in education policy

The Concept of Roma Children's and Students' Education including Development of Secondary and Tertiary Education¹³ (further on "2008 Concept") uses the term segregation only once in part devoted to recommendations where it sets a permanent task to state bodies, the Regional School Offices to "monitor segregation practices of school founders and school principals in Roma children education (in special schools, transfers to special schools, setting up classes with only Roma children)."¹⁴

The previous concept document "Concept of Integrated Education of Roma Children and Pupils including Secondary and Tertiary Education"¹⁵ (further on "2004 Concept") was elaborated as an annex to the broader education strategy National Program of Education in Slovakia for the next fifteen to twenty years (the so-called Millennium Project), approved by the Government in December 2001.

This 2004 Concept formulates several program changes that are needed to reach the goals set in the 2001 Millennium Project. Among them the need to "eliminate setting up segregated classes in schools and school facilities" is mentioned.¹⁶

The major focus of both concepts was on identifying the underlying causes of the low educational outcomes of Roma. Both concepts focused on increasing the access to and participation in education at all levels, and on improving curricula, educational methods and approaches to reflect the socioeconomic background of Roma children from marginalized communities, such as language barriers and so on.

¹³ Koncepcia výchovy a vzdelávania rómskych detí a žiakov vrátane rozvoja stredoškolského a vysokoškolského vzdelávania [The concept of Roma children's and pupils' education including development of secondary and tertiary education]. Approved by the Government Resolution No. 206 as of April 2, 2008. Available at <http://www.minedu.sk/index.php?lang=sk&rootId=2204>

¹⁴ Ibid, 20.

¹⁵ Koncepcia integrovaného vzdelávania rómskych detí a žiakov vrátane stredoškolského a vysokoškolského vzdelávania [The concept of integrated education of Roma children and pupils including secondary and tertiary education]. Approved by the Government Resolution No. 498/2004. Available at: http://www.romovia.vlada.gov.sk/data/att/3416_subor.pdf

¹⁶ Both concepts were preceded by ministerial reports: *The Current Status in Education of Roma Children and Youth*, acknowledged in the High Level Committee of the Ministry of Education on December 14, 2006 and *The Current Status in Education of Roma Children and Youth* approved in the High Level Committee of the Ministry of Education on September 23, 2003. Documents themselves are not available online, only the concepts that followed them. See <http://www.minedu.sk/index.php?lang=sk&rootId=360>.

The 2008 Concept confirms the long-term problem of Roma-related education policy in Slovakia: although the concept documents may be right in describing a certain problem and identifying its causes, the official tasks and targets set are often weak and do not reflect the analytical part of the document. For example, with respect to pre-primary education, the 2008 Concept states that “children from a socially deprived background should be motivated to attend kindergarten from the age of four years,” and that the “network or preschools in municipalities with a high share of Roma children should be increased,” but there is no word about how to implement this change.

Even though the 2008 Concept sets a permanent task to Regional School Offices to “monitor segregation practices of school founders and school principals in Roma children education (in special schools, transfers to special schools, setting up classes with only Roma children),” such vague formulations make the offices largely unaccountable. What is more important, the 2008 Concept does not recommend measures to be taken that could actually help eliminate segregation of Roma to special schools (such as, for example, compulsory testing in the mother tongue of a child, or eliminating the influence of special schools over testing via special pedagogical advising centers that are often established at the special schools and employ the same people).

The older 2004 Concept supported several measures adopted recently at those time: the zero grades in primary schools and establishment of teacher assistants. Also, it based its recommendation on several PHARE projects that piloted ideas like pre-primary education with engagement of Roma mothers (Mother and Child project), or transition classes and re-integration of children from special primary schools to mainstream schools. But these projects were never mainstreamed and the legal, institutional, and financial setting did not allow or motivate schools to implement them.

To sum up, after the 2004 Concept, several pilot projects aimed at Roma language and culture were launched and several other projects continued, but the mainstreaming and implementation of these pilot projects’ results in general was weak. Though the 2004 Concept formulates certain changes with respect to special education and testing and placement of Romani children to special schools, the share of children in compulsory education attending special primary schools continued in its rise.

Data on Roma children in Slovak education

The ethnic data on Roma children in education is collected by the state Institute of Information and Forecasting in Education (UIPS) on the basis of declared nationality. According to Salner (2005), the number of Roma children reported by UIPS is “significantly lower than their number reported by independent estimates or even by the Census,” and this data “is sufficient for preliminary identification of schools with a high share of Roma children, but it cannot be used for more accurate comparisons of schools as the quality of data for individual schools can differ significantly.”¹⁷

UIPS collects partial data on children from socially disadvantaged background within several subcategories, such as share of these children among those that did not attend kindergarten prior to their compulsory education. But the methodology is not comparable across the time series and several crucial data (such as total number of children from socially disadvantaged background at individual schools) are still not collected, which makes the actual use of this data quite limited.¹⁸

The two above mentioned governmental concepts rely on data collected by the Roma Educational Center Prešov (ROCEPO). ROCEPO conducted three rounds of large questionnaire surveys with school principals. The earliest research was published in 2002, “Findings of the research on Roma children’s status in the Slovak education system,”¹⁹ and mapped the number of children of Roma origin on the basis of their identification by school principals or teachers. The detailed methodology of data collection and constructing the sample of schools was not published and the reliability of this research cannot be assessed. The later surveys conducted in 2005 and 2007²⁰ changed the methodology and focused on

¹⁷ Salner, *Roma Children in the Slovak Education System*, 22.

¹⁸ Gallová Kriglerová, *Deti zo znevýhodneného prostredia na Slovensku a v zahraničí*, 54.

¹⁹ Metodické centrum Prešov: Vyhodnotenie prieskumu o postavení rómskeho dieťaťa a žiaka vo výchovno-vzdelávacom systéme SR [Findings of the research of the Roma children’s and pupils’ status in the Slovak education system]. Prešov: 2002. Available at: <http://www.rocepo.sk/modules/mydownloads/visit.php?cid=14&lid=31>

²⁰ Findings published separately for standard primary school and for special primary schools. Metodicko-pedagogické centrum Bratislava—alokované pracovisko Prešov: Správa o výsledkoch prieskumu o postavení žiaka zo sociálne znevýhodneného prostredia v základných školách [Report on the research results on the situation of children from socially disadvantaged background in primary schools]. (Prešov: 2008) Metodicko-pedagogické centrum Bratislava – alokované pracovisko Prešov: *Správa o výsledkoch prieskumu o postavení žiaka zo sociálne znevýhodneného prostredia*

children from socially disadvantaged backgrounds as identified by the principals/teachers who responded to the survey.²¹ Although the regions of Prešov and Košice were overrepresented in the sample, and the actual overlap of Roma children with the sample is unclear,²² this survey presented a thorough picture of educational participation, outcomes and other characteristics of this group.

The category of children from socially disadvantaged background, though with different definitions being applied, is the main target of education and social policy with respect to low-income families including Roma.²³ It is generally assumed that Roma children constitute a large share in this category, though no hard data comparisons have yet been presented.²⁴ The Ministry of Education annually collects data from indi-

v špeciálnych základných školách [Report on the research results on the situation of children from socially disadvantaged background in special primary schools]. Prešov: 2008. Available at: <http://www.rocepo.sk/modules/mydownloads/>

²¹ The group of these children had to fulfill three out of five conditions: 1) at least one parent receives subsistence social benefits, 2) at least one parent is unemployed, 3) at least one parent has only primary education attained, 4) nonstandard living and housing conditions (e.g. pupils has no place for learning, has no own bed, dwelling has no electricity, etc.), and 5) the language spoken in child's household differs from the language of instruction at school.

²² The study only states that "on the basis of empirical experience, as well as according to information by interviewed teachers, we claim that high share of children fulfilling the criteria of socially disadvantaged background are Roma pupils," 12.

²³ The Schools Act 245/2008 Coll. enacts in Article 2, point that "a child/pupil from the socially disadvantaged background is a child/pupil living in such an environment that, based on its social, family, economic and cultural conditions, inadequately supports the development of mental, behavioral, emotional characteristics of the child/pupil, does not support his/her socialization and does not provide adequate incentives for development of his/her personality." The same law states later in article 107, point 4 that "The contribution for pupils from socially disadvantaged background is provided per pupils from families with average monthly income during the preceding six months below or equal to the subsistence level." In practice, these pupils/families are identified based on the fact that they are provided with subsidized school meals and school aids based on family income testing.

²⁴ According to Gallová Kriglerová, *Deti zo znevýhodneného prostredia na Slovensku a v zahraničí*, 57–58, the demographer Boris Vaňo, in Salner, *Roma Children in the Slovak Education System*, 30, estimates the number of Roma children of compulsory education age to 81,700 in 2010, while the Ministry of Education reported 65,495 children from socially disadvantaged background. Moreover, the same relation (number of Roma children being higher than number of socially disadvantaged children) hold true for the schools in the statistically representative sample in the study supported by Roma Education Fund—Friedman, *School as Ghetto*.

vidual schools for budgeting purposes, including the number of children from socially disadvantaged background at each primary school. Data confirm that these children tend to concentrate in education streams that result in less and lower levels of education (usually ISCED 1 and 2 or ISCED 3C),²⁵ which subsequently impacts their prospects on the labor market. They more often attend special primary schools (7,666 students, which make up 45 percent in these schools) than standard primary schools (57,870 students, making up 14 percent in standard primary schools in September 2010). At the secondary level, according to data about social scholarship provided to students from low-income families, they usually attend secondary special schools (945 students making up 17 percent in 2007), joint secondary technical schools (4,920 students, a 7 percent share) and secondary vocational schools (3,083 students, a 5 percent share).

Overrepresentation of Roma children in Slovak special education was the main focus of the 2009 study “School as Ghetto” by the Roma Education Fund.²⁶ It revealed that in total, approximately 60 percent of children in special education in Slovakia are Roma, with even 85 percent of Roma in special classes of standard primary schools.

Another study based on a statistically representative sample was carried out by UNDP in 2006,²⁷ and is based on sociographic monitoring of Roma communities and geographically close population. The study has confirmed the worst situation in the level of education attained by Roma living in segregated settlements (44.2 percent did not finish primary school, six percent never attended a school), compared to those living in separated settlements (37.4 percent did not finish primary school) and mixed settlements (23.55 percent did not finish primary school).²⁸ Moreover, it noted the rising share of young Roma in special schools compared to their parents: “Among current school children and students (the segment of the Roma population in education) the percentage attending special schools rises to 12 percent. The lowest percentage in this form of education was in Roma households in mixed settlements (8.7 percent) and

²⁵ International Standard Classification of Education, ISCED 1997 available at http://www.unesco.org/education/information/nfsunesco/doc/isced_1997.htm

²⁶ Friedman, *School as Ghetto*.

²⁷ Filadelfiová, *Report on the Living Conditions of Roma in Slovakia*, 62–66.

²⁸ The research uses the concepts of three types of settlements Roma households live in: segregated (those living in a settlement at a distance from a town or village or separated by some barrier), separated (those living concentrated in a certain part of a town or village on its outskirts or within it) and mixed (living mixed in a town or village, i.e., among the majority population).

the highest was among segregated settlements' households (14.8 percent)." According to UNDP, this increase has three possible explanations: 1) fewer special schools in the past; 2) young Roma now are less likely to meet standards for entry in general education; or 3) misplacement of Roma in special schools. According to UNDP, "research and monitoring (IVO, SNSLP, SGI) suggest that the most likely explanation is the third one."

According to current legislation, a student can be placed into a special school or class only on the basis of a "health handicap after diagnostic examination, aimed at finding his/her special educational needs, with the examination done by the Center of Educational Counseling and Prevention."²⁹ So the only reason to be enrolled in the special school is a diagnosis of health disadvantage or handicap (mental handicap, behavioral disorders, disorders of hearing, seeing, physical handicap, pervasive development disorders).³⁰ However, the ratio of Roma children among pupils with disabilities does not correspond with their share in general population.

The conceptualization of an educational approach to Roma children on the basis of "elimination of social handicap" and their education in separate schools or classes goes back to the communist era. From the mid-1950s, based on Ministry of Education and School Department directives, special classes and special schools were established in regions with many "neglected Gypsy children."³¹ Despite several measures adopted through the decades, by the late 1980s Roma children failed fourteen times more often, left elementary school before graduating thirty times more often, and made up 24 percent of students in special schools for the mentally retarded.³²

Financing of the schools and its impact on (de)segregation

Although in the past the Slovak government had declared in several strategic documents its support for integrated education of Roma children, the system of financing does not reflect that commitment. On the contrary, we

²⁹ Zákon č. 245/2008 Z. z. o výchove a vzdelávaní, [Law no. 245/2008 coll. on education]; paragraph 95, section 3. Available at http://www.uips.sk/sub/uips.sk/images/PKVs/z245_2008.pdf

³⁰ Ibid., paragraph 2, letters k), l).

³¹ Krígerová, "Educational Attitudes and Aspirations of the Roma."

³² Ibid., 446.

believe the current school funding system contributes to the reproduction and deepening of segregation and does not motivate schools to adopt integrative or inclusive measures.

From the year 2004, primary and secondary schools, including schools for children with special educational needs, are financed on the basis of a per-student financing formula. In this system, the most important criterion for the allocation of funds to a specific school is the number of students enrolled. Since children with special educational needs (SEN)³³ have specific demands on the education process, schools receive higher financial resources for their education. In the case of two categories of pupils with SEN—intellectually talented children and pupils with health disadvantage—the basic financial norm on personal costs is increased by a coefficient ranging from 1.5 to 6.79. However, for pupils from socially disadvantaged environments (which includes a relatively large number of Roma students from socially excluded localities) schools receive only a lump contribution of 90 euros per year per pupil.³⁴ We believe that the existing system of per-student financing of schools with contributions differentiated according to the type of special needs has a direct impact on the approach of schools to children and on the manner of their education adopted by schools.

³³ The financing formula groups the children with special educational needs (defined in the Schools Act, article 2, points k)–q) into six categories with different financing. The Schools Act requires that children with special educational needs must have a statement about diagnosed special educational needs from the Centre of Educational Counseling and Prevention. Although the Schools Act places children from socially disadvantaged background among children with special educational needs, this group of children is not included in the six categories for financing children with SEN, nor do the Centers of Educational Counseling and Prevention provide statements about socially disadvantaged background of a child.

³⁴ Originally, the sum was derived by dividing the total sum that was earmarked by the Ministry of Education for the Roma teacher's assistants prior to 2008 by the total number of pupils from socially disadvantaged background. The Ministry of Education experts believed that there is a significant overlap between the Roma pupils at schools applying for funding for teacher's assistants and the pupils from socially disadvantaged background. The intention was to distribute the funds to schools in a transparent way (based on a per-student contribution) while allowing schools to use the contribution also on four other specific purposes, such as prevention of pediculosis, school trips and extracurricular activities, specialized classes, and school aids and equipment.

Table 1: The amounts of contribution per pupil for primary and special schools for the year 2011 (including pupils educated in special classes and individually integrated pupils)

		Primary school	Special primary school
Regular pupils	Coefficient	1	1
	Financial contribution	872,45 €	1 348,88 €
Group 1 – pupils with general intellectual talent	Coefficient	1,5	1
	Financial contribution	1 308,68 €	1 348,88 €
	<i>Increment</i>	<i>436,23 €</i>	<i>0 €</i>
Group 2 – pupils with mental disability; behavioral disorders; ADHD; and learning disability	Coefficient	1,93	1,286
	Financial contribution	1 683,83 €	1 734,66 €
	<i>Increment</i>	<i>811,38 €</i>	<i>385,78 €</i>
Pupils from socially disadvantaged environment	Coefficient	1	1
	Financial contribution	962,45 €	1 438,88 € or 1824,66 €
	<i>Increment</i>	<i>90,00 €</i>	<i>90,00 €</i>

When we compare the numbers in the table above, the financial incentive of schools to classify Roma children as disabled and place them in special classes, reported by several organizations, seems quite understandable. Since the budget of each school is primarily determined by the number of students enrolled in a school, schools are under pressure to retain as many children as possible.

In relation to Roma children, this has two consequences. On one hand, due to the demographic development of the majority population, Roma children are becoming “lucrative” for both standard and special schools. However, a too high concentration of Roma pupils starts to constitute a threat for the school, as they can cause so-called white flight of non-Roma students, which will subsequently be reflected in a lower total number of students. Therefore, when comparing the sums provided as per-student financial contributions with respect to the deficiencies in diagnostics of children from disadvantaged and linguistically different backgrounds, one could understand the frequently used strategy of schools to place these children in separate special classes or, when educated in an integrated class, at least to classify them as disabled. This way, the school will lose neither students nor financial resources. Another important fact is that the basic subsidy per student and consequent increased financial contribution for other categories of children with special educational needs are growing year by year, while the contribution on education of children from socially

disadvantaged environment has remained constant over the last three years.³⁵

Pro-integration efforts, outlined in governmental strategies, are confusing in the sense that the amount of subsidy provided to primary schools remains the same regardless of chosen method of education of children with special educational needs (individual integration into mainstream classes versus education in separate special classes). Also, a simple comparison of the amount of contribution for the same categories of children with SEN provided to special and mainstream schools shows that special schools are slightly preferred financially.

In Slovakia, there is currently no governmental program explicitly aimed at desegregation. In the area of education of Roma children, pro-integration efforts of schools are funded since 2009 solely through aforementioned contribution for pupils from socially disadvantaged environment (in the amount of 90 euros per pupil per year).

Schools may spend this contribution on five different purposes: salaries of teacher assistants; purchase of equipment; education in specialized classes; student's participation on designated activities and prevention of pediculosis. However, because of the relatively low amount of resources, in recent years this leads to destabilization of some already established supportive measures. Current allocations to schools are often insufficient even to employ a teacher assistant (for illustration, to cover the salary for one teacher assistant, school must have at least 65 pupils from socially disadvantaged background). These changes resulted in a significant reduction of the teaching assistants in primary schools. In 2011, the number of teaching assistants was 30 percent lower compared to 2008 (before the introduction of the current system of allocating contribution for children from socially disadvantaged background). Therefore, current volume and system of allocation of governmental funds is insufficient neither for more intensive support of desegregation efforts nor for maintaining elementary pro-integration measures.

Direct financial support for desegregation has been implemented in Slovakia only through projects funded by domestic and foreign donors (such as the Roma Education Fund, European Union—in the past through the pre-accession PHARE Program, the Open Society Institute and oth-

³⁵ In 2008, the maximum amount of a basic per-student subsidy in a primary school was some 965 euros, and after annual increases it reached 1,138.98 euros in 2011. The per-pupil contribution for children from socially disadvantaged background remains a constant 90 euros over this period.

ers). Despite positive results of some projects (like the development of culturally sensitive tests for school readiness and screening for exclusion of mental retardation), short-term support of selected desegregation measures—without their inclusion into state policy— obviously has a negative impact on the systematic application of desegregation measures and long-term sustainability of the results.

Impact of educational and social policy provisions on (de)segregation

By assessing the potential impact of educational and social policy setting on (de)segregation of Roma children in schools, except from the above-mentioned system of financing, we consider several following provisions as crucial:

Designation of school districts or catchment school areas,³⁶ which could be done by municipalities, can contribute to the projection of residential segregation into education in such cases, where school districts replicate the borders of spatially separated ethnic enclaves or socially excluded localities. In Slovakia, there are also some known cases where the delimitation of school districts does not correspond with the geographical division of city districts, but different and distant Roma-only streets (or even house numbers) are assigned to the same catchment school area, in order to concentrate a majority of Roma from the city to only one primary school.³⁷ Currently, there is no binding and enforceable legislation that would oblige the municipalities to take into account the risk of reproducing the spatial segregation into education by determining the school districts. Neither school nor anti-discrimination legislation contains the definition of segregation. Similarly, court decisions related to this area are largely missing, therefore there are currently no effective measures to prevent this practice.

³⁶ The Slovak education system applies the free choice of school principle in such a way that a parent can choose any primary school and apply for enrollment of his/her child regardless of the residence. The school headteacher decides about enrolling a child based on vacancies, but is obliged to accept all the pupils living in the school catchment area during their compulsory education period if they apply for enrollment at this school.

³⁷ School districts in Prešov city, as it was pointed out by Amnesty International Slovakia and Centre for Civil and Human Rights and followed by Slovak National Centre for Human Rights, does not perform discrimination/segregation. More information available at: <http://www.amnesty.sk/clanky/862/ai-slovensko-a-poradna-pre-obcianske-a-ludske-prava-vyzvali-mesto--presov--aby-odstranilo-segregaciu-romskych-deti--na-skolach>

The free choice of school principle is an important element allowing parents and children to pursue their own choice in the education system. However, exercise of this right by parents outside assigned school districts is described in several reports as a mechanism of so-called white flight, which occurs when there is an increased concentration of Roma children at one school. The legally guaranteed opportunity for parents to choose an educational institution results in many cases not only in Roma-only schools, but also prevents directors and founders of schools from adopting pro-inclusive measures. Because of the effort of directors to maintain the reputation of a “prestigious” school and to prevent the outflow of non-Roma pupils, directors often choose such internal differentiation of the school, which segregates Roma pupils into separated classes (or even buildings).

The deficiencies in the *preschool education* may also indirectly affect the future educational path of Roma children, as well as the strategies chosen by schools in their education. Despite several positive steps introduced in preschool education in recent years (like having the last year of preschool education be free of charge for all children, and priority enrollment of children one year before the beginning of compulsory education, and prohibition to place children into separate classes solely on the basis of their socially disadvantaged background³⁸), many weaknesses still remain. A missing system of early childhood education and care, insufficient capacities at pre-school facilities (which are often reserved for children of employed mothers) or even missing kindergartens in some localities; lack of financial support for pre-schools result in low level of Roma children enrolled. Consequently, Roma children unready for school, together with schools unready to include “different” children into the mainstream education stimulate further implementation of such supportive measures which, in the end, lead to further exclusion of Roma children.

Zero grades were introduced as one of the measures aimed at improving the school performance of Roma children. Despite their general acceptance by experts and teachers in practice, the effectiveness of zero grades and their impact on school performance as well as on further educational course of Roma children has not yet been a subject of evaluation. The questionable integration potential of zero grades relates mainly to the perspective of further inclusion of children into regular classes after they

³⁸ Zákon č. 245/2008 Z. z. o výchove a vzdelávaní, [Law no. 245/2008 coll. on education]; paragraph 28, article 9. Available at http://www.uips.sk/sub/uips.sk/images/PKvs/z245_2008.pdf

completed the zero grade. Given the fact, that the zero grade curriculum is created by dividing the first year curriculum in two academic years (allowing a slower pace of instruction), zero grade students usually create a homogeneous class during the first grade and consequently continue in their education in the same class throughout the whole primary school. The legislation allows such a procedure, since the question of further education of children after zero grade is formulated rather vague³⁹ and one of the legitimate options is placing the children into the so-called specialized class.

Specialized classes,⁴⁰ or catch-up classes, have been introduced to ensure the sustainability of the transitional, and were piloted by the PHARE project in 2005–2006. Although they initially played the role of remedial classes for reintegrating students from special education to mainstream classes, currently the range of children eligible for education in specialized classes is widened to pupils after completing the zero grade, as well as pupils from socially disadvantaged background during the whole period of their school attendance if they are in need of a compensating or accelerating program.⁴¹ Given the fact, that the length of the stay for the student in this type of class is not specified and without a legislative limit, there are serious doubts whether the measure will not be used to legitimize the permanent segregation of Roma children into separate classes. Similar measures, which some schools use for the creation of Roma-only classes, are classes with alternative curriculum for students from socially disadvantaged background where also “reduction of curriculum content and vocational aspects”⁴² could be applied.

Another obstacle in the inclusion of Roma children into the mainstream education is the way of using diagnostic tools, which unfortunately

³⁹ “After the competition of zero grade, further way of education of a student will be chosen taking into account the results of expert assessment of the level of achieved school preparedness.” *Štátny vzdelávací program pre 1. stupeň základnej školy v Slovenskej republike*, 33.

⁴⁰ The Decree on Primary School 320/2008 Coll. states in article 13, point 3–5 that specialized classes (*špecializované triedy*) can be set up for pupils that need a compensation or development programs and for pupils formerly attending an education program for pupils with health disabilities.

⁴¹ Vyhláška Ministerstva školstva Slovenskej republiky č. 320/2008 Z.z. o základnej škole [Decree of the Ministry of Education of the Slovak Republic no. 320/2008 Coll. on primary school], paragraph 13. Available at: http://www.minedu.sk/data/USERDATA/Legislativa/Vyhlasaky/2008_320.pdf

⁴² *Štátny vzdelávací program pre 2. stupeň základnej školy v Slovenskej republike*, [State educational program for secondary school in the Slovak Republic], 35.

often do not function as a tool to indentify the educational needs and the potential of children, but serve as a tool for “pathologization of being different.”⁴³ Despite efforts to adapt the Test of the School Readiness and to develop culturally sensitive tests for the case when mental retardation is suspected, the situation of diagnosis could be influenced by a number of factors that can significantly influence the performance of a child (linguistic, cultural, and socio-economic differences). Psychological and special-pedagogical diagnosis is still a tool for selection of children in the school system, which is also reflected in the number of children enrolled in special education. Although reducing the number of children in special schools and the integration of children with slighter forms of disability into mainstream schools has been an aim of almost all policy materials in education over the past ten years,⁴⁴ the reality is different. Although as a consequence of general demographic trends, the total number of school-aged children decreases from year to year significantly, the number of children in separated forms of education (in special classes and special schools) still remains approximately at the same level. At the same time, research reports show the disproportionate and non-decreasing representation of Roma children in special education, while the percentage of mentally disabled Romani children far exceeds the statistical probability of this diagnosis.

In addition to the financial mechanisms that may play a role in maintaining this status and that we have already described above, the fact that mainstream schools are unready to educate children with special needs undoubtedly plays a crucial role. Unfortunately, there are almost no methods for teachers that could be helpful for them in the process of desegregation and inclusion of different types of children into the mainstream education, there is no option for seminars or training on this topic, and no external (or internal) methodological support for schools and teachers by implementation of inclusive education.

From supportive mechanisms of social policy, in the past there was a system, criticized by many experts, of providing social scholarships according to a student's school results. Because the conditions and the amount of scholarship was the same at regular and special schools, it was a direct incentive for parents to place their children into special education,

⁴³ Špotáková, “The role of diagnostics in education directed at Roma students.”

⁴⁴ For example The Conception of the Development of Education in the Slovak Republic for the Next 15 to 20 Years (Project “Millennium”), the National Program of Education in the Slovak Republic, and the National Reform Program in the Slovak Republic.

since it was easier to achieve better results there that would entitle children and families to receive a higher scholarship. From 2009 the measure has changed and the contribution has a form of regular social welfare benefit.

Application of anti-discrimination provisions in promoting desegregation

Slovak legislation prohibits discrimination in education in two separate laws. The Anti-discrimination Act, adopted in the year 2004, transcribes European Union directives on equal treatment,⁴⁵ and in accordance with them “prohibits discrimination against persons on the basis of their sex, racial, national or ethnic origin in the area of social security, health care, by the provision of goods, services and education.”⁴⁶ Similarly, the Education Act explicitly states “equality in the access to education considering educational needs of each individual and the prohibition of all forms of discrimination, particularly segregation”⁴⁷ as one of the fundamental principles in education.

Although discrimination is de jure prohibited, the problem is that neither the Education Act, nor the related legislation includes the definition of segregation in relation to education, and they do not define the indicators and criteria for its measurement, as well as strategies for prevention and elimination of segregation. At the same time, there is no institution that would be directly responsible for taking measures and steps to eliminate segregation, which makes the application of antidiscrimination provisions and elimination of de facto segregation of Roma children difficult. Slovakia also does not collect data differentiated by the ethnicity, so the monitoring of segregation on a larger scale is currently almost impossible.

Three institutions are responsible for monitoring the implementation of anti-discrimination provisions in the educational system in Slovakia. The

⁴⁵ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

⁴⁶ Zákon č. 365/2004 o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou [law no. 365/2004 on equal treatment in some areas and about the protection against discrimination], paragraph 5, section 1. Available at <http://www.mensiny.vlada.gov.sk/data/files/5602.pdf>

⁴⁷ Zákon č. 245/2008 Z. z. o výchove a vzdelávaní, [law no. 245/2008 coll. on education]; paragraph 3, letter. c a d). Available at http://www.uips.sk/sub/uips.sk/images/PKvs/z245_2008.pdf

State School Inspection Agency (SSI) and the Regional Educational Offices are charged to supervise the application of the Education Act, and the Slovak National Center for Human Rights (SNCHR) is responsible for monitoring the implementation of the Anti-discrimination Act. SNCHR was established in 1994 as a specialized body on the national level, with a mission to support equal treatment and fight against discrimination. Its tasks are fulfilled by releasing recommendations and subsequent monitoring of their implementation, but unlike similar bodies in other EU countries, it does not have the authority to impose sanctions. In the cases of monitoring discrimination in the education system, SNCHR cooperates with the State School Inspection Agency on an *ad hoc* basis. During the past three years, the Center solved several motions from this area.

In the year 2010, SNCHR probed on the initiative of non-governmental organizations⁴⁸ two cases of segregation. One was dealing with the segregation of Roma children during lunch on a primary school; the second case was related to defining school districts in a way that created a concentration of Roma children from different localities of the city in only one elementary school. Although in one case the State School Inspection Agency confirmed an unequal treatment, SNCHR concluded that none of the cases constituted violation of Antidiscrimination Act.⁴⁹ Despite these findings, SNCHR at the same time also

highlights the fact that segregation is undesirable phenomenon that cannot be accepted in any form and for any reason. Therefore it recommends: to define segregation in the Slovak legal system; to incorporate the strict prohibition of measures that allow temporary or permanent segregation of disadvantaged groups into the Anti-discrimination Law; to monitor and punish segregation practices of founders and directors of kindergartens and primary schools; to reduce the number of Roma children attending special schools and to integrate them into mainstream schools; to stimulate special schools to take action on the de-segregation in these schools.⁵⁰

Unfortunately, SNCHR does not further specify whom these recommendations are addressed to or by what means and measures should they be realized.

Monitoring the compliance of schools with the Education Act is undertaken by the Regional Educational Office and the State School Inspection Agency. In addition to coordinating education of children with special

⁴⁸ Center for Civil and Human Rights and Amnesty International—Slovakia.

⁴⁹ Slovak National Center for Human Rights.

⁵⁰ *Ibid*, 129.

educational needs, the task of regional educational offices is to monitor segregation practices of school administrators in the education of Roma children. Unfortunately, this task is assigned to offices only by policy documents, not by the law, with a resulting lower accountability of these offices for this task. Furthermore, any guidelines for such monitoring are not available, and no results of such monitoring are known. The external control of schools is implemented by the State School Inspection Agency, which also monitors whether the educational programs of schools are in accordance with the objectives and principles of education (defined in the Law), including the prohibition of all forms of discrimination and segregation.⁵¹ Despite the formal authority to enforce the prohibition of discrimination, the inspection agency does not have a clear mandate, nor the necessary tools and procedures to implement it in practice.

Recently, the inspection agency focused on monitoring the education of children from socially disadvantaged backgrounds and on their inclusion in special schools and classes. Although the inspection agency found several deficiencies and recommended corrective action, it still controls only formal aspects of school integration. Recently, some at the State School Inspection Agency have said the reasons for not being able to monitor segregation lie in the lack of a definition of segregation in the legislation and the guidelines on how it can be monitored.⁵²

The missing definition of segregation on the national level is thus substituted by international treaties that were ratified by the Slovak Republic and which are binding for the county.⁵³ However, the evidence about the real practice and implementation of international commitments is provided by court decisions—for example, those from the European Court of Human Rights in Strasbourg, which has so far delivered three judgments regarding segregation in the education (*D.H. and others vs. the Czech Republic*, 2007; *Oršuš vs. Croatia*, 2010, and *Sampanis vs. Greece*, 2008).

Although Slovakia has not faced international legal action so far, these court decisions are binding for Slovakia as the member of the European Council. At the same time, Slovakia currently has pending litigation proc-

⁵¹ Rychnavská, “Monitoring of (de)segregation from the point of view of State School Inspectorate.”

⁵² Paulíniová, “Description of Segregation.”

⁵³ International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN in 1965; Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1952; UNESCO Convention against Discrimination in Education from 1960.

ess dealing with segregation in education, which might create an important precedent at national level.⁵⁴

Challenges of desegregation in Slovakia

In order to eliminate segregation of Roma children in education, adoption of several measures on different levels is needed. These measures include elimination of the overrepresentation of Roma children in special schools, prevention of the establishment of so-called Roma-only schools or classes, methodological support, and further training for teachers, as well as securing adequate funding for pro-inclusive measures in education.

To enable schools to respond to the educational needs of Roma children from socially disadvantaged backgrounds, the elaboration of the concept of inclusive education should be one of the first steps in the educational policy. Such a concept should provide a clear commitment of state policy as well as methodical procedures and measures for schools and teachers. In-service teacher training focusing on this topic should be provided, and regular sharing of knowledge and experience between teachers should be supported.

To eliminate financial incentives for unreasonable classification of Roma children as mentally disabled, or as having learning or behavioral disorders, as well as to provide adequate financial resources for pro-inclusive measures, the per-student formula for children from socially disadvantaged background should be adjusted. The amount of per-pupil contribution should allow schools to employ a teacher assistant (who speaks the mother tongue of these children) or to employ a special pedagogue, if necessary. Criteria for deciding whether a pupil is from a socially disadvantaged background or not must be also set clearly and the scope should be extended. Currently, there are two different definitions in the Education Act itself and another different definition in the State Educational Program (national curriculum). Currently applied income-testing for classifying a pupil in this category excludes, for example, families that are not in material need but are still below the subsistence level, as well as children that are not in material need, but have special educational needs on the basis of social or cultural disadvantage.

⁵⁴ At the beginning of 2011, the NGO Center for Civil and Human Rights took one primary school from the Prešov region to court for the segregation of Roma children in education and placing them into separate classes solely on the basis of ethnicity.

As for eliminating existing segregation, there are still many challenges that must be overcome. To prevent early selection of children to special educational tracks, special primary schools should not be allowed to establish preparatory grades for children (equivalent of the zero grades at standard primary schools). This should eliminate a reasonable threat that children from socially disadvantaged background without mental disabilities get enrolled in special education. Equally important is the monitoring over the enrollment process of children in special primary schools and the obligation to carry out repeated examinations of each child.

Regarding the separation of Roma children in mainstream education, it should be confirmed that existing opportunities to reduce curricula and to establish classes with an alternative curricula does not lead to segregation of Romani children in practice. In order to eliminate possible segregation of children in so-called specialized classes, we see as crucial step to set forth a maximum length of child's stay in such a class and, at the same time, to carry out an evaluation of impacts of this type of separated education. As we have stated above, there is an increasing number of so-called Roma-only schools. These schools are threatened by the risk that the quality of education there might fall below acceptable standards, and that the social exclusion of children educated there will thus be further maintained with consequences for their later lack of involvement in social and economic activities. Municipalities should be obliged to take into account the overall ethnic and social composition of their population when setting individual school districts (school catchment areas) and to guarantee that all social and ethnic groups are equally distributed in the school districts so that the school districts do not copy the existing spatial segregation.⁵⁵

And last but not least, effective monitoring and sanctioning of outright segregation measures by school administrators should be noted, and include an explicit prohibition of adopting such temporary affirmative action that results in a temporary or permanent segregation of disadvantaged groups.

⁵⁵ In case this measure will be more demanding in terms of transport for pupils, the municipality may have the costs reimbursed from the state budget, but only for the pupils with special educational needs (see Law on State Administration in Education and School Self-Government, Article 8, point 7).

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Conclusion

IULIUS ROSTAS

This is not the history some readers may have expected. It is not focused on events, dates or characters. It is the history of a process that began ten years ago in Bulgaria and spread across Central and Eastern Europe. Educational segregation had been brought into the public forum as a legal concept years earlier, as indicated by Danka and Rostas in their chapter, and concerns about equal opportunities for Roma in education date back to the communist era. But the important movement on the issue only began in Vidin.

Roma school desegregation has not been a unitary process—some countries reacted faster, some slower. Numerous factors influenced the process, with both desired and undesired decisions and outcomes. There were international ones like EU enlargement, the positioning of international institutions, and new opportunities and platforms to make the voice of school desegregation activists heard. And there were internal factors, such as electoral competition, the development of the NGO sector, changes of those in power. These countries have also had different internal political dynamics and social economic developments since the fall of communism. The discourse on Roma had also different fluctuations and approaches to the issue faced by Roma. Some issues date back to communism and communist policies targeting Roma directly or indirectly and have a significant influence on the situation of Roma nowadays.

There were also changes in the composition of those that spoke on behalf of Roma. Some actors disappeared, other new organizations were set up with different priorities and, sometimes, contradictory positions. As a result of affirmative action programs, scholarships and other supportive measures promoted by governments and donors, a new generation of Roma activists appeared in the last twenty years, well educated but less connected to their communities than the traditional Roma leaders who dominated the early 1990s were.

The quality of life among Roma deteriorated significantly in post-communism. Ghettoization, increasing isolation, social tensions and, sometimes conflicts with the majority population are facts of life for many Roma today. These processes influenced the way Roma perceived education, their opportunities and attainments in education.

There were also similarities among these countries in regard to the Roma school desegregation process. All five countries included here have significant Roma populations, up to 10 percent according to some estimates. They are former communist countries with a degree of similarity in how they treated Roma in the period after the Second World War. After the fall of communism, these countries engaged with the Euro-Atlantic integration process of aligning with international organizations like the Council of Europe, NATO, and the European Union. In order to achieve their political and geostrategic objectives, these countries had to comply with internationally accepted standards, among them respect for human and minority rights. During the accession process, their policies towards Roma were placed under close scrutiny, mainly by the EU and its member states. In 2004 and 2007, these countries became members of the EU and have to coordinate their social inclusion policies.

The aim of this section is to bring together these factors into a unified analytical framework by identifying gaps, specific differences and contradictions or paradoxes in the five countries under investigation. The section has an evaluative aspect, and raises challenging questions for the future of the process. Where does the Roma school desegregation process stand after ten years? Is it possible to anticipate in which directions it will flow? Based on the analyses provided here, there are several possible scenarios.

One clarification is needed regarding the approach of this research. The criticism below is not aimed at any institution or person. It has also a biographical aspect as the author was closely involved in the Roma school desegregation process as an advocate at the national and international levels, and as a representative of a donor organization that supported the process. Thus, specific critics and statements represent, in a sense, self-criticism as a result of self-reflection and partly assuming own responsibility for failures.

The explanatory model used for analyzing the Roma school desegregation process is the policy making cycle. The model allows for looking at how the issue of school segregation was defined, who the actors were, what resources they had, who set the agenda, and in what context this process took place. It analyses the policy options and the decisions made, the implementation process and the policy tools used by governments, and

what were the weak parts of the complete policy making cycle. This section combines the academic discourse on policy making with the practical experiences of school desegregation in the field, putting the process into a larger perspective.

Using the policy making cycle as an explanatory model has several advantages: (1) it allows a comparative perspective on government actions across countries; (2) it offers an analysis of the international institutions and donor reaction to the issue of Roma school segregation and how they influenced government policies about it; (3) it gives the opportunity to analyze the contextual factors that played a significant role in creating platforms for Roma rights activists to communicate their grievances; and (4) it allows an assessment of the role of the judicial power in policy making as regards desegregation.

Once the analytical framework is chosen, the first challenge arrives: is desegregation a policy of governments in the region? Some Roma activists have argued that only in a few countries could one talk about policies towards Roma, with most measures taken by governments being difficult to categorize as public policies to address social issues.¹ To avoid any possible misinterpretation on the character of the measures taken by governments, an operational theory of public policy would make clear that irrespective of the expectations of different actors the measures of the governments could be seen as public policies. By attempting to encompass the main elements on which most policy scholars agreed, Knoepfel and his colleagues define a public policy as,

a series of intentionally coherent decisions or activities taken or carried out by different public—and sometimes—private actors, whose resources, institutional links and interests vary, with a view to resolving in a targeted manner a problem that is politically defined as collective in nature. This group of decisions and activities gives rise to formalized actions of a more or less restrictive nature that are often aimed at modifying the behavior of social groups presumed to be at the root of, or able to solve, the collective problem to be resolved (target groups) in the interest of the social groups who suffer the negative effects of the problem in question (final beneficiaries).²

Since Laswell's seminal publication, it became common among policy scholars to speak of policy stages or phases. Werner Jann and Kai Wegrich present a simplified model of policy cycle based on elements common to the majority of theories on policy cycle. According to them, a

¹ Tashev et al, *DecadeWatch*.

² Knoepfel et al, *Public Policy*, 24.

policy cycle consists of agenda setting, policy formulation and decision-making, implementation, evaluation and termination.³ Other authors differentiate between stages at the beginning of the cycle that Jann and Wegrich presented, and/or distinguish the stages at the end of the cycle. Jenkins identifies the following stages: initiation, information, consideration, decision, implementation, evaluation and termination.⁴ Hogwood and Gunn propose a policy cycle based on nine stages: deciding to decide, deciding how to decide, issue definition, forecasting, setting objectives and priorities, options analysis, policy implementation, monitoring and control, evaluation and review and policy maintenance, succession and termination.⁵ Knoepfel and his colleagues present a theoretical model that focuses on the initial stages of policy making (Figure 1): (re-emergence of a problem, perception of private and public problems, agenda setting, formulation of alternatives, adoption of a legislative program, adoption of action plans, and evaluation of policy effects.⁶

Since Roma school desegregation is a process that started not such a long time ago, this model seems to fit better the development of the process, and especially how school segregation emerged as a problem, the perception of relevant actors, and proposed solutions. It is worth noting that the distinctions between the stages of policy making as well as among the actors that participate in this process are difficult to observe in practice.⁷ Nevertheless, they make possible the study of the complex process of policy making and must be perceived as theoretical artifacts and not as clear distinctions with direct practical consequences. There are numerous scholars criticizing the policy cycle model. One such criticism that constitutes in fact an additional advantage to the current analysis is that the policy cycle model is based on a top-down perspective.⁸

³ Jann and Wegrich, "Theories," 45–55.

⁴ Jenkins, *Policy Analysis*, 17.

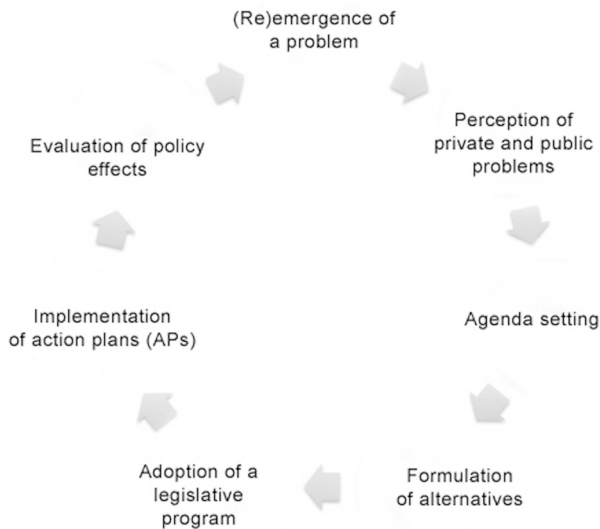
⁵ Hogwood and Gunn, *Policy Analysis*, 4.

⁶ Knoepfel et al, *Public Policy*, 32.

⁷ Lindblom and Woodhouse, *The Policy Making Process*, 22–25.

⁸ Jann and Wegrich, "Theories," 56.

Figure 1 Policy cycle



Source: Knoepfel et al: 2007: 32

Segregation as a Problem

As mentioned by several policy reviewers (see the texts of Gwendolyn Albert and Miroslava Hapalová and Martina Kubánová) and Roma activists (see the interviews with Ivan Vesely, Viktória Mohácsi and Rumyan Russinov) the education of Roma under communism can best be understood in terms of equal opportunities and equity. Overrepresentation in special schools was a problem raised by some experts in communist Czechoslovakia. However, only after the fall of communism did Roma in these countries become an issue for the society at large.

If one looks back on communist policies, it is possible to connect the ideological intention to transform Roma and other social groups into proletarians, into New Men or *Homo Sovieticus*, through education. The communist regimes implemented coercive educational policies also as part of controlling the Roma, seen as parasites and having a life-style that contradicted the socialist social order. As noted by Mirga and Nicolae,⁹ a

⁹ Mirga and Nicolae, *The Roma in the Twenty-first Century*.

result of these measures is a thin strata of Roma intellectuals who emerged and were able to articulate before state bureaucracy and international organizations Roma problems more efficiently than could traditional Roma leaders or activists from Western Europe.

In the post-communist period, education was perceived by many experts and members of society as the way to improve the situation of Roma. This was often wishful thinking, as the economic crisis accompanying the transition to democracy and market economies led to slashed state budgets for education, creating a severe drop in the quality of life of most Roma, and to a lower value attached to education by society in general. In addition, as an extension of communist policies, policy makers and educational experts were more concerned with enrolling Roma in the education system than with the quality of the education received or the prospects of students to integrate into the labor market. Equity or discrimination was not part of the discourse of the educational experts or policy makers until recently.

As regards post-communist policies towards Roma, the discrepancies between discourse and action on the side of policy makers give raise to an “integration paradox.” In the official discourse, the integration of Roma became almost a cliché that transcends political and social divisions. But when it comes to concrete government actions or public policies, the integration discourse takes a different route. Hence, the “integration paradox”: on the one hand the governments promote integration of Roma, especially through education, while in practice, segregation of Roma in education continues or grows.

Roma school segregation was never a social problem in any of these countries as defined by sociologists—“an alleged situation that is incompatible with the values of a significant number of people who agree that action is needed to alter the situation.”¹⁰ Roma school segregation was never a topic for public debate, people did not discuss it extensively, and mass media all over the region presented only sporadic information on the topic. Segregation was discussed as an issue in restricted professional circles, and what is commonly defined as public opinion was not exposed to the subject. The most important factor, as defined by William Kornblum and Joseph Julian, was the power of the group and individuals to determine whether a situation in society is defined as a social problem.¹¹

¹⁰ Rubington and Weinberg, *The Study of Social Problems*, 4.

¹¹ Kornblum and Julian, *Social Problems*, 5.

And here comes a second paradox: the Roma as a group are what the U.S. Supreme Court categorized as an insular political minority. As a group, Roma are powerless, taking into account their role in national and regional politics. They are underrepresented in local, regional and national councils and parliaments, and do not constitute a significant political actor in any of these countries. Nevertheless, a few Roma activists managed to put the segregation issue on the agenda of their governments, and provoke reactions from international organizations on the topic.

If one agrees with the statement that all policies aim to resolve a public problem, the above statement seems to contradict the whole idea of the book. To solve this apparent contradiction one has to add to policy analysis the discussion on power, an instrument specific to political analysis.¹² Other authors make a distinction between public problems, which presents the object of public controversies and social problems as issues that are discussed by a large number of people. Garraud defines the three following conditions for referring to an issue as a public problem: (1) the constitution of a demand emanating from particular social groups; (2) the development of a controversy or public debate; and (3) the existence of a conflict between organized social groups and political authorities.¹³

In Bulgaria, Roma school desegregation activists worked hard to communicate their grievances to the government, the larger public, and donors but they were seen as radicals by government structures, fellow human rights activists, and donor organizations. Eventually they managed to put their concerns on the government's agenda by mentioning it as a specific task in the Framework Program for Roma Integration school desegregation, but this was not a matter of public debate. After the implementation of the school desegregation project in Vidin and its extension to several other cities, the issue of segregation received some attention from the media. But it is difficult to categorize it as a controversy or a public debate.

In the Czech Republic, the issue came up only when the European Roma Rights Center filed an application with the European Court of Human Rights in Strasbourg, as shown by Albert in her contribution to this book. The action was seen as a foreign intervention into a non-existent issue.

In Hungary, discrimination towards Roma in education as well as in other fields received attention from the side of human rights activists and

¹² Knoepfel et al., *Public Policy*, 19.

¹³ *Ibid.*, 130.

experts as indicated by Szendrey. However, school segregation became an issue for debate in the media and for education professionals only after the government started implementing its desegregation policies. However, among the countries in the region, this came closest to a public controversy.

In Romania, the issue of school segregation was not perceived by officials, human rights activists, or even by many Roma activists as an issue, not to mention the public. Segregation entered the discourse of Roma activists through contagion, as mentioned by Bercus during his interview. Even when the government started acting on the issue, discussions on segregation took place within limited circles of professionals.

In Slovakia, the issue was not publicly discussed at all. Government officials were under constant pressure from international organizations to address this issue and some officials started using the term itself. However, as Orgovánová explains, even Roma activists and those sympathetic to the Roma cause, had trouble defining what exactly segregation meant.

The fact that segregation was not a public problem, nor even a social problem, in any of these countries influenced significantly the success of the school desegregation process. Roma school desegregation activists managed to put the issue on the agenda of governments in an international context. But when that context changed significantly, school desegregation slipped down or disappeared from the government agenda. Without raising a public controversy around the issue of school segregation, and without mobilizing a strong constituency, the issue failed to become a social movement on a large social scale. Thus, it remained an isolated issue and when international pressure on governments decreased, the issue was taken off the agenda.

Definition of Segregation as a Public Problem

Roma school desegregation activists emphasized in their discourse the ethnic aspect of segregation, and the role anti-Gypsyism played in separating Roma pupils from their peers. While this view is supported by research in these countries, the activist discourse proved later to be an obstacle in building coalitions with other groups interested in the transformation of education systems in CEE countries. For example, a high number of Roma children are misdiagnosed as mentally disabled in Central Eastern European countries. In the Czech Republic, a Roma child was 27 times more likely to be placed in a special school than a non-Roma child

(ECtHR decision in *DH*, Grand Chamber, 7). In their fight against segregation, Roma school desegregation activists built their discourse without consulting other interested groups, such as persons with disabilities or broader human rights groups interested in equality.

As a result, they failed to bring on board other groups directly interested in transforming the education system, and Roma school desegregation became an issue promoted only by Roma rights groups, marginal to mainstream human rights discourse in the region. While they were right in equating the unequal access Roma children have to quality education with racial discrimination, the inclusion they advocated for was solely for themselves. Thus, the transformations they were demanding could be regarded as partial, applying just to one, highly unpopular group. This was not an incentive for other groups to join the cause of transforming the education system.

The *DH* case, in which Roma parents supported by ERRC sued the Czech Government for illegally assigning Roma children into special schools, supports this analysis. The case was built on the presumption that Roma are assigned to special schools solely on their ethnicity. The comparator was the basic schools and the ethnically diverse environment. The argument indirectly supported the existence of schools for the mentally disabled, and did not question the existence of a separate educational system. Thus, one might interpret the ECtHR decision in the *DH* case as indirectly supporting the separate educational systems for children with disabilities, as long as the separation is not made along ethnic lines.¹⁴

The concept of inclusive education transcends the ethnic, social or disability divide.¹⁵ It puts matters simply: schools should serve the needs of each pupil. Educational systems in CEE are mostly teacher-centered, focusing on discipline and the way information is transmitted. Inclusive education requires a different approach. The pedagogical practices are child-centered and education is meant to cater to each student, with teaching methods that are interactive and take into account diverse needs.

¹⁴ The UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities Rule 6 affirms the equal rights of all children, youth and adults with disabilities to education but also states that education should be provided in “an integrated school settings” and in the “general school settings.”

¹⁵ UNESCO defines inclusion as “a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children. (UNESCO, Guidelines, 13).

The trend at the European level is to integrate all children within the same educational facilities and to accommodate the needs of the beneficiaries. The Salamanca Statement & Framework for Action on Special Needs Education states that “schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other condition.” And that “this should include disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and children from other disadvantaged or marginalized areas or groups” (para 3).

The desegregation discourse was a human rights one based on the legal provisions of equality and non-discrimination. In their discourse, Roma school desegregation activists emphasized ethnicity and equality and focused less on the goal of desegregation. Their language focused on creating equal opportunities for Roma children by offering them equal quality education. They were right in diagnosing the situation but they did not propose a coherent concept to promote policy changes.

The need for an inclusive education was not a central point of these activists. Their opponents often argued that the aim of desegregation is bus-ing, which will lead to conflicts with non-Roma and a decreased quality of education in integrated schools. Such worries were expressed by education experts and professionals and by non-Roma parents. No surprise that these leaders were often catalogued as radical community activists without any knowledge on the education system and practices.

The fact that no clear concept of education was articulated by Roma school desegregation activists impacted their capacity to promote social change. They were not necessarily supposed to produce new concepts, as the literature on education and the interest of several international organizations offered multiple opportunities. The lack of a concrete concept and clear vision for reforms affected their strategy and capacity to build coalitions. Roma school desegregation activists relied extensively on mobilizing international pressure on governments to desegregate, rather than on mobilizing communities. Once these international levers diminished in importance, the issue of school desegregation moved down the governments’ agenda. On the other hand, they had a very limited capacity to build coalitions as the reforms proposed by them were perceived by other actors as referring only to Roma and excluding other beneficiaries.

Setting the Agenda

As mentioned by Taba and Ryder in their contribution, one of the most important factors in putting Roma school desegregation on the agenda of the governments in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia was the move toward EU membership. In fact, with the publishing of the Agenda 2000 of the European Commission in July 1997 and the opening of negotiations with the accession countries, issues faced by Roma got on the agenda of these governments due to the "Copenhagen criteria." These criteria stated that membership required that the candidate country had "in addition to fulfilling certain economic criteria, stability of institutions and guaranteed democracy, the rule of law and human rights and respect for and protection of minorities [as] prerequisite[s] for joining EU." Thus, some human rights groups, among them Roma rights advocates, promoted issues that they considered important for the candidate countries' compliance with international human rights standards and with the Copenhagen criteria. They found a sensitive audience in the EU institutions and did not necessarily need to raise awareness in their own country about a specific issue. Once the EU institutions, mainly the European Commission through its annual regular reports towards accession mentioned a problem the governments had to take action to address that specific problem.

Although the importance of EU accession was high, the role of other international organizations should also be acknowledged.¹⁶ Analyzing the role of international organizations in policy making, Ervik, Kildal and Nilssen, propose two concepts that are relevant for this approach: policy ideas and policy discourse.¹⁷ Policy ideas provide the values, the content and paths for action as regard the descriptive aspects of reality as well as normative aspects,¹⁸ while policy discourse represent coherent systems of ideas that link the normative aspects of policies with the practical possibilities to achieve them, having a legitimizing role of those policies.¹⁹ The human rights mechanism and documents of the international organizations were instrumental in promoting the human rights agenda of the govern-

¹⁶ For a case study on how international organizations contributed to putting school segregation on the agenda of the government see the analysis of Rostas and Nicoara regarding the work of UN monitoring bodies on Slovakia (Rostas, Nicoara, *Desegregation Advocacy Strategies*, 2004: 118–122).

¹⁷ Ervik et al., *The Role of International Organizations*, 6.

¹⁸ Kildal, *Comparing Social Policy Ideas*, 21.

¹⁹ Ervik et al., *The Role of International Organizations*, 6.

ments by the human rights groups. Some of these institutions formulated issues in a clearer manner than the EU, and demanded specific actions from the governments, serving as justifications for the human rights advocated in their work. Thus, the international human rights framework served as a source for policy ideas and the legitimization of policies.

Another instrument to influence the agenda of these governments, especially as regards policy formulation and implementation was the financial aid offered to candidate countries through different financial instruments. All these countries have used PHARE to address access of Roma to education, while the governments of Hungary and Romania mentioned desegregation among the objectives of the PHARE programs on education.

There were also contextual factors that should be taken into account while analyzing the agenda setting of the governments. One such factor for Bulgaria was the NATO intervention in the Kosovo conflict, as mentioned by Rumyan Russinov during his interview. For the Czech Republic, the criticism from international organizations as well as the lawsuit filed by the European Roma Rights Center pushed the government to adopt legislative measures that supposedly led to integration of the Roma into mainstream schools (see Albert's analysis in this book).

Another important factor for advancing Roma school desegregation and for putting it on the agenda was a new platform launched by the World Bank and the Open Society Institute (OSI) in 2003, which materialized in 2005 as an initiative of nine governments in Central and Eastern Europe: the Decade of Roma Inclusion 2005–2015. The Decade served as a platform of negotiations between the governments and activists. School segregation was acknowledged by all participating governments in their action plans, and the prime ministers of these governments pledged to close the gap between Roma and non-Roma in regard to, among other things, education.

Who promoted school desegregation? What resources did they have? As mentioned earlier, creating equal opportunities in education for Roma had been an issue for some education experts and Roma activists. However, the European Roma Rights Center was the first actor to conceptualize the separation of Roma in education as segregation already in 1997 (see chapter 2). The Roma Participation Program of the Open Society Institute (OSI-RPP), especially after 2000, became an outspoken actor on desegregation of Roma. It supported several school desegregation projects in Bulgaria and Hungary, as well as school desegregation advocacy activities in the Czech Republic, Romania, and Slovakia. Its grantees in these

countries as well as some other Roma rights activists and human rights groups were the actors that advocated school desegregation. In April 2003, an alliance of approximately twenty of these NGOs was set up following a meeting in Nis, Serbia. Its aim was to coordinate Roma school desegregation among OSI-RPP grant winners from Bulgaria, the Czech Republic, Hungary, Romania, Serbia, and Slovakia. The Alliance for school Desegregation did not go further than information for a press release, and the NGOs continued their work independently.

After the establishment of the Roma Education Fund (REF) as part of the Decade for Roma Inclusion, it took over the Roma education portfolio of the OSI. This solved some tensions among different OSI programs working on education for Roma which had different approaches to education, and specifically to the issue of segregation (see Danká's and Rostas's chapter). The REF continued funding desegregation projects in Bulgaria and Romania, and research in Hungary, the Czech Republic and Slovakia. It became more engaged with governments to promote policy change, and was not necessarily focused on school desegregation. Due to its donors' funding policies, the REF has its own structural limitations in promoting desegregation. However, currently the REF is the only donor for which supporting the Roma school desegregation is still a priority.

When analyzing the promoters of desegregation it is important to observe that these institutions had limited or no constituencies at all. The NGOs that advocated for school desegregation worked in several communities and voiced those concerns. Their discourse made sense for those isolated Roma communities where segregation was raised as an issue by Roma parents. But they were not mass organizations at the national level, and their message did not penetrate all isolated or closed communities. In this sense, those that opposed desegregation as well as the policy makers questioned their legitimacy and the fact that segregation was an issue for all Roma.

In pursuing their objective, these institutions chose to put the issue on the political agenda by putting international pressure on the governments to desegregate. This strategy, though productive during EU accession, led to a decrease in the visibility and action once these countries joined the EU. Even before, when the accession calendar became clearer, the politicians in these countries understood that the situation of Roma would not be the obstacle on their country's road to the EU. Having no constituency translated into public support for Roma school desegregation, the process not only lost its visibility but also the school segregation issue became less frequent in the discourse on education for Roma.

Among the five types of agenda setting suggested by Knoepfel and his colleagues, Roma school desegregation seems to fit the “exterior initiative” model.²⁰ Experiences from these countries show that this separation should not be seen as rigid since a combination of factors is possible. In Bulgaria, Roma school desegregation activists combined it with the mobilization strategy in the seven locations where school desegregation projects were implemented. In the Czech Republic and Slovakia, the combination was with media coverage and blaming the governments. In Hungary, due to close electoral competition among two political blocs, the combination was with “policy supply” where one competitor initiated a process to attract more votes. In Romania, Roma school desegregation activists acted more like a corporation to fit the fifth model, “silent corporatist action.”

Policy Formulation and Decision Making

As presented by Roma school desegregation activists, desegregation raises important questions about the ethnicity and status of Roma.²¹ The non-Roma have to perceive Roma as their potential equals or equal in rights. Desegregation was seen as a matter of social justice, or in human rights terms, equality and non-discrimination in the enjoyment of the right to education. The current situation in education was seen as part of the discrimination faced by Roma in society and its roots were past discrimination, prejudices and stereotypes towards Roma. The educational system was incapable of offering equal opportunities and the same quality educa-

²⁰ Knoepfel and his colleagues present five ideal types of “agenda setting”: (1) thematicization through media coverage; (2) “Mobilisation” or “exterior initiative”—EU policy making being often associated with top-down processes that introduce collective problems initially discussed at international level to the (infra-) national agenda; (3) “Policy supply” or “electoral competition” when parties not only react but they also define problems; (4) “Internal anticipation” insisting on the role of administrative actors and public authorities; and (5) “Silent corporatist action” that analyses the more discreet role of interest groups in the context of the policy. (Knoepfel, et al., *Public Policy Analysis*, 139–145)

²¹ Information on the points made in this section is scattered, usually included in brochures, activity reports and, sometimes books. Under different format such points were expressed by Roma school desegregation activists in seminars and conferences on the subject of school segregation. The author used his personal notes from such meetings, including those meetings with government and local authorities officials, in writing up this section. This was one of the reasons to include in this book a section with interviews with Roma activists involved in school desegregation.

tion to Roma as to non-Roma children. The Roma school desegregation activists advocated for bringing an immediate end to segregation and integrating Roma children in mainstream schools and classes, accompanied by necessary measures like afternoon classes, teacher training, extracurricular activities, and the involvement of parents, both Roma and non-Roma. Their focus was on governments, institutions which, according to them, had to provide equal access to quality education for all.

Some of the Roma activists concerned with Romani language teaching and minority education emphasized the need for changes in the curriculum and promotion of Romani culture by the schools. Some even opposed desegregation, viewing it as a way to assimilate Roma since Romani culture was not part of the school culture.

Education experts and teachers emphasized the need for a more gradual approach to segregation, with a preparatory stage of teacher training and catch-up programs and a second stage of gradually mixing student cohorts. Some teachers organizations were worried that adopting radical measures, such as closing down the segregated schools, would have led to a loss of jobs for fellow teachers. The gradual approach was also seen as having lower potential for ethnic conflicts.

One topic of divide in the debates about Roma school segregation was that on desegregation vs. increasing the quality of education. Roma school desegregation supporters advocated mixing student cohorts and support measures to be undertaken by authorities. Those that opposed desegregation or those that did not fully understand the education concept proposed instead to focus on quality of education in segregated schools by investing in infrastructure, improving teaching methods, increasing parental involvement, and other measures. Often, these two visions were perceived by their supporters as excluding each other. The opponents of desegregation argued that resources and efforts should not be spent on mixing the student cohorts as the process might raise conflicts. They proposed focusing on education quality instead of desegregation. Roma school desegregation advocates' reaction was to focus on quality of education but in integrated settings and not in segregated environments.

In analyzing the policy making process and especially the policy formulation stage, one also has to take into consideration the role of the courts. As shown by Rostas in the chapter on judicial policy making, the courts and quasi-judicial bodies, with the exception of Hungary, did not influence the desegregation process by setting standards for government policies on the right to education. The decisions of the courts did not determine government action nor did it shape government actions. Not even

the decisions of the European Court of Human Rights were implemented by the concerned governments to the letter and the spirit of the law. Only in Hungary did the courts set limits to government actions and the Supreme Court offered guidance to courts regarding the uniform application of the law.

Policy makers had to select from the multitude of problems faced by Roma. While education was an easy option, segregation was perceived as a controversial topic. They did not want to alienate their constituencies by desegregating the educational systems, a radical measure that was not supported by the non-Roma. Thus, they preferred to delegate the issue to lower levels of administration. Only in a few cases, were desegregation measures discussed and adopted by Parliaments. Even the governments preferred in most cases to delegate responsibilities to deal with school segregation to education ministries and other agencies.

In Bulgaria, the Government adopted the Framework Program for Equal Integration of Roma which included provisions on school desegregation. But Roma school desegregation activists could not mobilize significant political will to put desegregation on the state budget. The closest they came, was in 2005 with the bill for establishing a desegregation fund, which was rejected by the Parliament.

The Czech Government had a dialectical position towards desegregation, both denying it and silently taking some actions to support Roma access to education. The Ministry of Education was the locus for adopting most of the measures concerning Roma, including reforms of the special schools. The Parliament was involved in the desegregation only with the adoption of the new education law in 2005.²²

Hungary developed the most complex and coherent set of measures aimed at school desegregation, involving decisions at different levels of administration including ministries, agencies, the government, and the Parliament. The government openly assumed the political responsibility for school desegregation by proposing bills aimed at integration, and the Parliament adopted legislation and amendments to promote school desegregation.

In Romania, Roma school desegregation activists and NGOs mobilized international pressure and determined the Ministry of Education to recog-

²² For the efficiency of the law in dismantelling the special schools, see Roma Education Fund and European Roma Rights Center (2008), *Persistent Segregation of Roma in the Czech Education System*, Budapest, available at: <http://www.romaeducationfund.hu/publications/studies-and-researches>.

nize segregation as a major issue as regards equal access to quality education for Roma through a notification and ministerial order (both internal regulations of the ministry). In addition, the Ministry of Education has allocated funds through EU pre-accession support for school desegregation. However, the success was limited as Roma school segregation did not get on the agenda of the government or the Parliament and was not included in the education law that was adopted in 2010.

Slovakia moved slower with desegregation. The government acknowledged school segregation, but no government manifesto included school desegregation as a specific objective. The pressure from Roma school desegregation activists was weak, as the whole Roma movement—and especially Roma rights groups—seem to be less developed there than in the other countries.

Policy makers in all these countries preferred the term integration to desegregation. Segregation was perceived as having strong racist connotations, mostly connected to the situation of the African-Americans in the United States, and later of Blacks in South Africa during apartheid. As some Roma activists put it, it did not matter how they called the process as long as the students were finally mixed together and measures to support the process were taken. But the reluctance of policy makers to utilize segregation as a concept says something about their attitude towards social justice and human rights.

Deborah Stone pointed out the role of causal ideas in agenda setting: “Problem definition is a process of image making, where the images have to do fundamentally with attributing cause, blame, and responsibility. Conditions, difficulties, or issues thus do not have inherent properties that make them more or less likely to be seen as problems or to be expanded. Rather, political actors *deliberately portray them* in ways calculated to gain support for their side. And political actors, in turn, do not simply accept causal models that are given from science or popular culture or any other source. They compose stories that describe harms and difficulties, attribute them to actions of other individuals or organizations, and thereby claim the right to invoke government power to stop the harm.”²³ It is difficult to say whether those that used segregation as a concept to describe the situation of Roma in education had in mind such a complex strategy, but in the last ten years the promotion of desegregation followed the path outlined by Stone.

²³ Stone, *Causal Stories*, 282.

Implementation and Evaluation

This section analyses the execution of the decisions made by Parliaments and governments by looking at the actions of administrative authorities, the resources used in the execution of the decisions, and looks into the effects of the policies as regards relevance to the issues it intended to address, efficiency and effectiveness.

The Roma school desegregation process reached its peak between 2003 and 2005, when all the participating governments in the Decade of Roma Inclusion acknowledged that segregation was an issue for the Roma in their countries. The action plans were developed in the framework of EU accession (see Taba and Ryder chapter) and in the framework of the Decade of Roma Inclusion 2005–2015.

Implementation was a top-down process. As stated above, policy makers preferred to delegate their responsibilities to lower level administrative structures rather than have them on the table of cabinet meetings and parliamentary discussions. This could be seen also in the relatively small number of government acts, bills, and laws discussed at the highest levels. Another example is the reports on the progress made in the implementation of the national actions plans under the Decade of Roma Inclusion. As a rule, these reports were presented by low-level officials from administrations that had limited responsibilities for the executions of those measures.

Decentralization imposed duties and responsibilities for local authorities, but their involvement in formulating policies was non-existent, or limited at best. Local authorities did not use compulsory measures to implement school desegregation. Sometimes, as in the case of Hungary, the most decentralized system, local authorities refused to apply for additional resources to desegregate schools. In other instances, local authorities tried to find “innovative” solutions to avoid school desegregation, such as pressuring Roma communities into feeling that they would prefer segregated education, by merging school units under their responsibility so on paper it looked like integrated schooling. From this point of view, centralized systems were better prepared to implement local level decisions made by central authorities.

Implementation of the school desegregation measures led in some cases to undesired outcomes, as in the case with the overnight desegregation in Romania under the PHARE program. Being unprepared for such a transformation, many principals forced desegregation to show that it is not possible. Such experiments damaged the whole desegregation process by

delaying the mixture of student cohorts and led to increased tensions between Roma and non-Roma.

The resources allocated for Roma school desegregation, with the exception of Hungary, were limited and endangered the process itself. Most of the financial resources were allocated by governments from EU funds. The exception was Hungary where the national budget allocation for school integration was significant as indicated by Szendrey and Mohácsi. Moreover, the Hungarian Government conditioned any access of local authorities to EU funds by the development of a strategy of inclusion of multiple disadvantaged groups. Budgeting allocation for Roma school desegregation is a significant indicator for the commitment of the governments to bring an end to school segregation. Moreover, in many cases financing is used as incentive to segregate Roma into special school and classes.

There were no fines with a deterrent effect imposed on those responsible for the segregation of Roma children who did not comply with the law and did not implement the desegregation programs. In limited cases, fines were imposed but they were mostly symbolic in character (see chapter 3). No use of force or police intervention was necessary for Roma school desegregation.

Taba and Ryder summarized the type of activities implemented by the countries under the PHARE programs as consisting of teacher training, activities related to the enrollment of Roma in schools and kindergarten, second chance programs, after school/remedial teaching programs, training for school mediators, establishment of educational centers, activities for parents to participate in education, and investment in infrastructure and school equipment.

While none can deny the importance of such measures to transform a school environment, their relevance for desegregation remains very limited if the student cohorts are not mixed.

The involvement of NGOs in the process was an important organizational element. They not only attracted funds from non-budgetary sources but also carried out different activities, put to good use their expertise, and provided feedback to authorities. In Bulgaria, NGOs were the leading force of the Roma school desegregation process.²⁴ In Romania and Hungary, NGOs were partners in projects and programs and provided expertise and feedback to authorities.

Reaching consensus on and attracting political support for desegregation could ensure sustainability of the process over time, irrespective of

²⁴ Bulgarian Helsinki Committee, *On the Road to Maturity*.

who is in power. With the exception of Hungary, where Roma school desegregation became a public issue after the government initiated the process, in the other countries school desegregation is not on the agenda of any political actor, mainstream or not. In Bulgaria and Romania, the political forces representing the Turkish and Hungarian minorities were reluctant to adopt a position towards Roma school desegregation as they have on their agenda the minority education in mother tongue. They might have perceived desegregation as threatening their achievements as regards minority education.

Though the resources allocated to Roma school desegregation have been limited, what was also lacking was a proper management system of those resources. With the exception of Hungary, the interventions on education for Roma were inconsistent, implemented on an ad-hoc basis, and the involvement of stakeholders was selective.

What changes have occurred in school desegregation so far? How are they perceived by the end beneficiaries and experts? How was progress reported, and in what settings?

Answering these questions is challenging as the governments, with the exception of Hungary, did not put in place effective monitoring and evaluation mechanisms. This failure is compounded by the restrictive interpretation of legal provisions for data protection, most of the governments arguing that it is illegal to collect data by ethnicity as this will infringe the right to privacy. Roma and human rights activists perceived the refusal of the governments to present data disaggregated by ethnicity as a refusal to be held accountable to the people. Thus, one should not be surprised about the scarcity of data regarding the impact of the government measures.

Roma school desegregation activists, as could be also seen from the interviews in this book, are rather dissatisfied with the results achieved so far. With the exception of Hungary, where several tens of thousands of Roma students have been integrated into mainstream schools, in the other countries Roma school desegregation did not create a significant number of beneficiaries. Even if one counts all the schools where attempts at desegregation were made, the number of potential beneficiary would have been limited.

In a 2009 survey with over 300 respondents selected from among experts on Roma-related issues from the countries participating in the Decade of Roma Inclusion, the experts assessed desegregation programs as the lowest in terms of impact. Only 32.46 percent viewed such programs as (very) positive, with an additional 20.21 percent stating that they do not

exist.²⁵ The data, though not necessarily reflecting the actual situation on the ground, provides a clear image of the perceptions of an important segment of people in the desegregation process.

The way these actors perceived the impact of desegregation measures raises questions about policy credibility and efficiency. As a result of investing limited resources for information and communication, the credibility of the measures taken by the governments to desegregate is low. As regards policy efficiency, it is difficult to estimate, as there are no clear data on the resources and results achieved. However, experts and, sometimes, even governments agree that too little has been done to achieve equity in education. The Presidential Commission for Analyzing and Elaboration of Policies in Education and Research in Romania²⁶ and the Czech government in the Roma Integration Policy Concept 2005 admitted their failure to provide equal access to quality education for Roma.²⁷

The Future of the Process

Desegregation raises questions about the structure and content of educational systems. How best to organize schools to respond to the needs of minorities and those with special needs? How to provide early childhood education to ensure equity and social justice? How should education be organized in terms of the content, knowledge, skills, and values transmitted to students? What information, skills and values should be at the core of the curriculum? How should the curriculum address ethnic differences? Specifically, how should the curriculum address Roma ethnicity in a way that would make Roma students feel proud, and create a sense of belonging to a larger community? Such questions should be part of the debate on segregation and especially in formulating policy alternatives.

An important issue is also the ethnic relevance of education. If a Roma pupil graduates high school or receives a university degree, but he or she is ashamed of his or her ethnic identity or denies it, from a Roma commu-

²⁵ *Decade Watch*, 77.

²⁶ The 2007 report of the Commission mentions the following four characteristics of the educational systems in Romania: inefficiency, limited relevance, inequitable and low quality. The report is available at www.edu.presidency.ro

²⁷ The Czech Government's diagnose was more precise: "government spending in this area lacks effectiveness as it places too much emphasis on ethnic rather than on social approaches, on ad-hoc and short-term interventions rather than on long-term priorities." <http://www.vlada.cz/dokument8150.html> .

nity point of view, education has no relevance. Only in considering this point of view can experts understand the reluctance and skepticism of some Roma parents to motivate their children to attend school. For these Roma parents, attending school is a way to assimilate their children, or a means of social control over their distinct group.

Limited understanding of these points of view led experts and policy makers to fall into the “cultural” prejudicial trap that education is not part of Roma culture, or that Romani culture is not a “high culture” and that Roma are non-integrable or uncivilized. Unfortunately, when experts and policy makers are talking about inclusive education few of them take into account these aspects and the degree of inclusiveness of the educational systems of children that are poor, belong to a minority, have little or no preschool education, or have less family support for education.

The actors involved in the policy formulation held limited visions on desegregation. Experts focused more on educational measures. Roma and human rights activists proposed a larger view, where community was part of the process. However, one should also include a range of educational policies but also urban policies. Especially for the long term objectives, urban policies plays an important role in ensuring access to social services on a non-discriminatory bases.

As regards resources, few points have to be made. Since the launch of the desegregation process, all these countries have become members of the EU and have access to significant extra budgetary resources to invest in human resources. From a financial point of view, it is clear that the money were not a factor in the subsequent decrease in importance of the school desegregation.

With EU membership and access to significant resources come risks. NGOs might access these funds to promote desegregation, but the risk is that they take over the responsibilities of the state to provide equal access to quality education. They risk becoming service providers and paying less attention to monitoring as a watchdog. Thus, the change promoted would not be sustainable as the state institutions have no ownership of the school desegregation process. Another consequence is that the NGOs will have limited capacity to communicate to the public, policy makers, and donors that school segregation is an issue.

As regards Roma school desegregation activists there is a need to adapt their discourse and strategies to the new environment after EU accession. The necessity of increasing their coalition capacity—to attract support from other social actors like the disability rights movement, the immigrant rights movement, and other vulnerable groups—in order to reform the

educational systems to become more inclusive is crucial. The ethnic agenda has so far led to limited changes. Today, access to resources and grassroots mobilization is needed to produce significant policy change.

The public at large cannot be ignored. No inclusion of Roma is possible without the support of the majority population. It does not matter how such support should be generated, but society has to accept that the “only game in town” is the full inclusion of Roma and other vulnerable groups.

Regarding the governments, three possible scenarios are possible. The first is to admit failure and give up the will to address desegregation process. Such a scenario is unlikely as Roma issues have become an important public problem for discussion at the European level. The second scenario will be for the governments of these countries to continue their inconsistent implementation of desegregation measures. Having in mind that Roma have limited political power and influence, this scenario is probable. The third scenario would be that the governments will reconsider their position on school desegregation and start implementing reforms aimed at systemic changes in education to make them more inclusive. The incentives to do this are clear, based on research in the field and most demographic and economic arguments. Also, the adoption by the EU of a framework for Roma integration strategies seems to favor the third scenario.

There are many variables that will shape what will actually happen. The financial crisis, the rise of xenophobia, and increasing support for right wing political parties might shape the debate on school desegregation. But as the late former Czech President Václav Havel said in 1993, for Europe in the years ahead, the treatment of Roma will be a litmus test of civil society.²⁸

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“The first thing to cross the mind of an American lawyer who encounters discrimination against Roma is that it must be like *Brown v. Board of Education* and the civil rights movement all over again. But upon getting into civil rights conflict under European law, Americans quickly discover major differences in procedure (e.g., no class actions, no injunctions), the extent to which civil rights law substance has developed, social and political environments, expectations and attitudes of plaintiffs and defendants, and what lawyers actually accomplish. This book has much to teach on both continents.”

Jack Greenberg, Alphonse Fletcher, Jr. Professor of Law, Columbia University

“*Ten Years After* is a comprehensive assessment of progress to date in ending school segregation in Europe and a wake up call that more effort, resources and political leadership are required if the promise of equal justice for all children is to be redeemed.”

James Goldston, Executive Director, Open Society Justice Initiative

“*Ten Years After* examines the social processes and governmental policies which have an impact on the development of the Roma communities. Beyond the discussion of the specific topic of school desegregation, the variety of views presented in the book provide an unambiguous answer to the question what the leading approach of the various policies and projects directed towards Roma in Central and Eastern Europe should be, in order to avoid their treatment as marginalised or as exotic community. The process of school desegregation epitomises the choices that Roma make within the larger societies. Understanding these choices is critical for the social emancipation of Roma and for their equal citizenship in the European societies. The book is an invaluable contribution to contemporary Romani studies and will be of interest for a wide audience of scholars and policy makers.”

Elena Marushiakova and **Veselin Popov**, Associate Professors, Institute for Ethnology and Folklore Studies and Ethnographic Museum, Bulgarian Academy of Sciences

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